Supreme Court, U. S.
FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

October Term, 1974.

No. 73-1765.

SYLVIA MEEK, BERTHA G. MYERS, CHARLES A. WEATHERLEY, AMERICAN CIVIL LIBERTIES UNION, NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, PENNSYLVANIA JEWISH COMMUNITY COUNCIL and AMERICANS FOR SEPARATION OF CHURCH AND STATE,

Appellants,

v.

JOHN C. PITTENGER, as Secretary of Education of the Commonwealth of Pennsylvania, and GRACE M. SLOAN, as Treasurer of the Commonwealth of Pennsylvania,

Appellees,

and

JOSE DIAZ and ENILDA DIAZ, His Wife, et al.,

Intervening Parties Appellees.

Appeal From the United States District Court for the Eastern District of Pennsylvania.

FILED MARCH 20, 1974

PROBABLE JURISDICTION NOTED OCTOBER 15, 1974

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UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION No. 73-269.

SYLVIA MEEK, BERTHA G. MYERS, CHARLES A. WEATHERLY, AMERICAN CIVIL LIBERTIES UNION, NATIONAL ASSOCIATION FOR ADVANCEMENT OF COLORED PEOPLE, PENNSYLVANIA JEWISH COMMUNITY RELATIONS COUNCIL and AMERICANS UNITED FOR SEPARATION OF CHURCH and STATE

v.

JOHN C. PITTINGER, as Secretary of Education of the Commonwealth of Pennsylvania and Grace M. Sloan as Treasurer

---

Jose Diaz and Enilda Diaz, his wife, on their own behalf and as guardians of their minor children, Dalila, Jose, Jr., and Sergio Diaz; William Zimmerspitz and Nancy Zimmerspitz, his wife, on their own behalf and as guardians of their minor child, Rochelle Zimmerspitz; Thomas J. Hassall and Marie Hassall, his wife, on their own behalf and as guardians of their minor child, Patricia Anne; Daniel F. X. Powell and Anna T. Powell, his wife, on their own behalf and as guardians of their minor children, Kathleen A. and Daniel F. X., Jr.; Seth W. Watson, Jr. and Anne P. Watson, his wife, on their own behalf and as guardians of their minor child, Ellen P.,

Intervening Parties, Defendants.

THREE JUDGE COURT.

RELEVANT DOCKET ENTRIES.

1 Feb. 7, 1973. Complaint filed.

5 Feb. 21, 1973. Motion of Jose Diaz, et al to Intervene as Parties Deft., filed.

6 Feb. 27, 1973. Answer filed.

7 Apr. 16, 1973. Order SEITZ, Ch. J., 3rd Judicial Circuit, designating Hon. John J. Gibbons, U. S. Circuit Judge, and the Hon. A. Leon Higginbotham, Jr. U. S. District Judge, to sit with the Hon. Louis C. Bechtle, U. S. District Judge as members of the Court for the hearing and determination of the above captioned matter, filed. (4-17-73 entered and copies mailed)

8 Apr. 26, 1973. Plffs. motion for temporary restraining order, filed.

9 Apr 26, 1973. Plffs. motion for preliminary injunction and affidavit, filed.

11 May 17, 1973. HEARING sur Motion for Temporary Restraining Order—DENIED. Final Pretrial Order No. 1 is deemed to govern the progress of this case.

11 May 17, 1973. Order dtd 5/17/73 that the Motion of Jose Diaz, et al to Intervene as parties deft is GRANTED; further Ordered that the Motion to Intervene by Pa. Association for Independent Schools, reported by counsel to be in the process of filing, when filed, will be deemed GRANTED, filed.

12 May 21, 1973. Motion of intervener defts to dismiss the complaint, filed.

13 May 23, 1973. Order that motion of intervener defs, Jose Diaz et al, to dismiss the complaint is DENIED filed 5/24/73 entered and copies mailed. Motion of John P. Chesick et al to intervene as parties deft, filed.

16 June 4, 1973. Answer of Intervener defts, Jose Diaz, et al, filed.

20 June 5, 1973. Motion to dismiss, of Intervenor-defts Chesick, et al, memorandum in support of motion, & notice, filed.

21 June 5, 1973. Motion of Intervenor-defts Chesick, et al under FRCP 12 to strike paragraph 8 of plff's complaint, Brief in support of motion to strike paragraph 8 & Notice, filed.

33 Jul. 3, 1973. Order, BECHTLE, J., that hearing scheduled for 6/18/73 is contd. to 9/19/73; all compliance dates are extended 60 days and fixing pre-trial for 9/5/73 at 4:00 p.m., etc., filed. Entered & copies mailed 7/5/73.

34 Aug. 2, 1973. Plff's. interrogatories to John C. Pittinger and Grace M. Sloan, filed.

37 Sep. 10, 1973. Joint final pre-trial order, filed.

Sep. 10, 1973. Hearing sur: Plff's. motion for preliminary injunction.

Sep. 10, 1973. Witnesses sworn.

Sep. 13, 1973. Hearing resumes—Plff's. moves to amend complaint—written motion and briefs to be filed—motion to dismiss withdrawn—C. A. V.

44 Sep. 28, 1973. Defts'. request for findings of fact and conclusions of law of Commonwealth of Pa. and Jose Diaz, et al, filed.

45 Feb. 11, 1974. Opinion, GIBBONS, CJ and BECHTLE, J., that plffs'. application for prelim. and final inj. against expenditure of Commonwealth funds pursuant to Act 194 will be DENIED and plffs'. application for a prelim. and final inj. against expenditure of Commonwealth funds pursuant to Act 195 will be GRANTED, etc., filed. entr. & ntcs mailed 2/12/74.

46 Feb. 11, 1974. Opinion, HIGGINBOTHAM, J., concurring in part and DISSENTING in part with opinion of GIBBONS, CJ and BECHTLE, J., filed. entr. & notice mailed 2/12/74.

47 Mar. 7, 1974. Order, Gibbons, C. J. and Bechtle J., that plff's. application for preliminary and final injunction pursuant to Acts 194 & 195 are DENIED; defts. are preliminarily and finally enjoined from expending Commonwealth Funds pursuant to Act 195, etc., Commonwealth of Penna., et al are directed to file within 30 days an amendment to "Guidelines for the Administration of Acts 194 & 195" with Order Higginbotham, J., that he concurs with order only to the extent where relief as granted or denied is consistent, etc., filed. entr. & cys. mailed 3/8/74.

48 Mar. 21, 1974. Notice of appeal to Supreme Court of the United States, filed.

49 Apr. 12, 1974. Revisions to Guidelines for Administration of Acts 194 & 195, filed.

May 20, 1974. Record transmitted to U. S. Supreme Court.

COMPLAINT.

I. *Statement as to Jurisdiction.*

1. This is a civil action brought by the plaintiffs, on their own behalf and on behalf of all others similarly situated, for a temporary and permanent injunction against the allocation and use of the funds of the Commonwealth of Pennsylvania to finance the operations of schools owned and controlled by religious organizations and organized for and engaged in the practice, propagation and teaching of religion, and to declare such use violative of the First and Fourteenth Amendments to the Federal Constitution.

2. Jurisdiction is conferred upon this Court pursuant to Title 28, United States Code, Sections 1331, 1343(3), 2281, 2283, 2201 and 2202.

3. The amount in controversy in this suit, exclusive of interest and costs, is in excess of Ten Thousand Dollars ($10,000) as more fully appears hereinafter.

4. Each of the individual plaintiffs is a citizen of the United States. Each resides in the State of Pennsylvania, and in the Eastern District of Pennsylvania. Each of them pays various taxes in and to the Commonwealth of Pennsylvania. One or more of the plaintiffs have purchased and continues to purchase cigarettes in the Commonwealth of Pennsylvania and has paid the Pennsylvania Cigarette Tax thereon. Plaintiff, Sylvia Meek, has a child regularly registered in and attending public school in Pennsylvania.

5. The American Civil Liberties Union, the National Association for the Advancement of Colored People, the Pennsylvania Jewish Community Relations Council and Americans United for Separation of Church and State are organizations which are interested in maintaining the

separation of church and state and which have members who are citizens and taxpayers of the Commonwealth of Pennsylvania.

6. Defendant John C. Pittinger is Secretary of Education of the Commonwealth of Pennsylvania and is sued herein in that capacity. Defendant Grace M. Sloan is the Treasurer of the Commonwealth of Pennsylvania and is sued herein in that capacity.

II. *Factual Allegations.*

7. (a) On July 12, 1972, the Governor of Pennsylvania signed into law Act No. 194 providing for the payment to nonpublic schools of tax-raised funds to pay for auxiliary services provided in such schools. (The text of Act No. 194 is set forth herein as Appendix A.)

(b) On July 12, 1972, the Governor of Pennsylvania signed into law Act No. 195 providing for the purchase with tax-raised funds of textbooks, instructional equipment and instructional materials to be loaned to and used in nonpublic schools. (The text of Act No. 195 is set forth herein as Appendix B.)

(c) On September 22, 1972, the Governor of Pennsylvania signed into law Act No. 204 appropriating Commonwealth funds to the Pennsylvania Parent Assistance Authority to be used to reimburse parents for tuition paid by them to nonpublic schools. (The text of Act No. 204 is set forth herein as Appendix C.)

8. Each of the Acts on its face and as construed and applied by the defendants authorizes and directs payments to or use of books, materials and equipment in schools which (1) are controlled by churches or religious organizations, (2) have as their purpose the teaching, propagation and promotion of a particular religious faith, (3) conduct

their operations, curriculums and programs to fulfill that purpose, (4) impose religious restrictions on admissions, (5) require attendance at instruction in theology and religious doctrine, (6) require attendance at or participation in religious worship, (7) are an integral part of the religious mission of the sponsoring church, (8) have as a substantial or dominant purpose the inculcation of religious values, (9) impose religious restrictions on faculty appointments, and (10) impose religious restrictions on what the faculty may teach.

9. It is against the religious conscience of each of the plaintiffs to be forced by the operation of the taxing power to contribute to the propagation of religion in general and to religions to which he does not adhere in particular, or for the support or maintenance of sectarian schools or places of worship.

10. The First Amendment of the United States Constitution, made applicable to the States by the Fourteenth Amendment, provides in part that "Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof * * *."

III. *Causes of Action*

11. *First Count:* Each of the Acts on its face and as construed and applied by the defendants is a law respecting an establishment of religion in violation of the First Amendment of the United States Constitution in that it (a) constitutes governmental financing and subsidizing of schools which are controlled by religious bodies, organized for and engaged in the practice, propagation and teaching of religion, and of schools limiting or giving preference in, admission and employment to persons of particular religious faiths; (b) constitutes governmental action whose

purpose and primary effect is to advance religion; (c) gives rise to an excessive governmental involvement in and entanglement with religion; and (d) gives rise to and intensifies political fragmentation and divisiveness along religious lines.

12. *Second Count:* Each of the Acts on its face and as construed and applied by the defendants, violates the First Amendment to the United States Constitution in that it prohibits the free exercise of religion on the part of the plaintiffs by reason of the fact that it constitutes compulsory taxation for the support of religion or religious schools.

IV. *Other Allegations.*

13. This suit involves a genuine case of controversy between the plaintiffs and defendants.

14. The plaintiffs have no plain, speedy or adequate remedy at law and will suffer irreparable injury unless a preliminary and permanent injunction is granted.

V. *Prayers for Relief.*

15. The plaintiffs pray that the following relief be granted:

(1) That a three-judge court be convened as provided in Title 28, Sections 2281 and 2283 of the United States Code to declare unconstitutional and enjoin the enforcement of each of the Acts, as hereinbefore set forth.

(2) That the defendants and each of them be enjoined from approving or paying any funds of the Commonwealth of Pennsylvania pursuant to the aforesaid Acts or from otherwise enforcing or administering said Acts.

(3) That a preliminary injunction pending the trial of the issues be granted to the plaintiffs against the defendants for the relief sought herein.

(4) That the plaintiffs be granted such other and further relief as the Court may deem just and proper.

William P. Thorn,
William P. Thorn,
Leo Pfeffer,
Leo Pfeffer,
Attorneys for Plaintiffs.

Appendix "A".

Act 194
Approved 7-12-72 Printer's No. 2846

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2151 Session of 1972

INTRODUCED BY MESSRS. GALLAGHER, M. P. MULLEN, SCANLON, BELLOMINI, BERKES, IRVIS, DOMBROWSKI, MALADY, PRENDERGAST, ENGLEHART, HOMER, KESTER, FEE, RENWICK, DOYLE, O'DONNELL, YAHNER, MURTHA, COMER, MEBUS, FOX, BRUNNER, LEDERER, RIEGER, RUSH, SCHMITT, WRIGHT, JONES, RUANE, DORSEY, MCMONAGLE, EARLY, RUGGIERO, R. K. HAMILTON, GEISLER, MYERS, NEEDHAM, BUTERA, CROWLEY, KATZ, J. H. HAMILTON, COPPOLINO, MASTRANGELO, BONETTO, NOVAK, RAPPAPORT, HALVERSON, CAPUTO, BURKARDT, KNEPPER, MRS. GILETTE, MESSRS. RYBAK, PIEVSKY, MRS. KELLY, MRS. ANDERSON, MESSRS. MUSTO, M. M. MULLEN, LUTTY, GLEASON, MILLER, KLUNK, KLEPPER, FRANK J. LYNCH, GOODMAN, BIXLER and SCIRICA, MAY 10, 1972

REFERRED TO COMMITTEE ON EDUCATION, MAY 10, 1972

AN ACT

1 Amending the act of March 10, 1949 (P. L. 30), entitled
"An act

2 relating to the public school system, including
certain
3 provisions applicable as well to private and paro-
chial
4 schools; amending, revising, consolidating and
changing the
5 laws relating thereto," providing for auxiliary
services for
6 the benefit of children attending nonpublic schools
in the
7 Commonwealth.
8 The General Assembly of the Commonwealth of
Pennsylvania
9 hereby enacts as follows:
10 Section 1. The act of March 10, 1949 (P. L. 30),
known as the
11 "Public School Code of 1949," is amended by adding a
section to
12 read:
13 *Section 922-A. Auxiliary Services; Nonpublic*
School
14 *Children.—(a) Legislative Finding; Declaration of*
Policy. The
15 *welfare of the Commonwealth requires that the present*
and future
16 *generations of school age children be assured ample*
opportunity

1 *to develop to the fullest their intellectual capacities. To*

further this objective, the Commonwealth provides, through tax

funds of the Commonwealth, auxiliary services free of charge to

children attending public schools within the Commonwealth.

Approximately one quarter of all children in the Commonwealth,

in compliance with the compulsory attendance provisions of this

act, attend nonpublic schools. Although their parents are

taxpayers of the Commonwealth, these children do not receive

auxiliary services from the Commonwealth. It is the intent of

the General Assembly by this enactment to assure the providing

of such auxiliary services in such a manner that every school

child in the Commonwealth will equitably share in the benefits

thereof.

(b) Definitions. The following terms, whenever used or

referred to in this section, shall have the following meanings,

except in those circumstances where the context clearly

indicates otherwise:

"Nonpublic school" means any school, other than a public

school within the Commonwealth of Pennsylvania, wherein a

resident of the Commonwealth may legally fulfill the compulsory

school attendance requirements of this act and which meet the

requirements of Title VI of the Civil Rights Act of 1964 (Public

Law 88-352).

"Auxiliary services" means guidance, counseling and testing

services; psychological services; services for exceptional

children; remedial and therapeutic services; speech and hearing

services; services for the improvement of the educationally

disadvantaged (such as, but not limited to, teaching English as

a second language), and such other secular, neutral,

non-ideological services as are of benefit to nonpublic school

—2—

children and are presently or hereafter provided for public

school children of the Commonwealth.

(c) Provision of Services. Pursuant to rules and regulations

established by the secretary, each intermediate unit shall

provide auxiliary services to all children who are enrolled in

grades kindergarten through twelve in nonpublic schools wherein

the requirements of the compulsory attendance provisions of this

act may be met and which are located within the area served by

the intermediate unit, such auxiliary services to be provided in

their respective schools. The secretary shall each year

apportion to each intermediate unit an amount equal to the cost

of providing such services but in no case shall the amount

apportioned be in excess of thirty dollars ($30) per pupil

enrolled in nonpublic schools within the area served by the

intermediate unit.

Section 2. If a part of this act is invalid, all valid parts

that are severable from the invalid part remain in effect. If a

part of this act is invalid, in one or more of its applications,

the part remains in effect in all valid applications that are

severable from the invalid applications.

Section 3. This act shall take effect immediately.

Appendix "B".

Act 195

Approved 7-12-72 Printer's No. 2847

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2152 Session of 1972

INTRODUCED BY MESSRS. M. P. MULLEN, GALLAGHER, BELLOMINI, SCANLON, BERKES, DOMBROWSKI, MALADY, PRENDERGAST, ENGLEHART, HOMER, KESTER, FEE, RENWICK, DOYLE, O'DONNELL, YAHNER, MURTHA, COMER, MEBUS, FOX, BRUNNER, LEDERER, RIEGER, RUSH, SCHMITT, WRIGHT, JONES, RUANE, R. K. HAMILTON, GEISLER, MYERS, NEEDHAM, BUTERA, CROWLEY, KATZ, J. H. HAMILTON, COPPOLINO, MASTRANGELO, BONETTO, NOVAK, HALVERSON, KNEPPER, MRS. ANDERSON, MESSRS. PIEVSKY, PERRY, FRANK LYNCH, EARLY, KLUNK, MRS. KELLY, MESSRS. RAPPAPORT, GLEASON, MOORE, GOODMAN, SCIRICA, CAPUTO, BURKARDT, RYBAK, RUGGIERO, MUSTO, MEHOLCHICK, MRS. GILLETTE, MESSRS. MILLER AND DORSEY, MAY 10, 1972

REFERRED TO COMMITTEE ON EDUCATION, MAY 10, 1972

AN ACT

1 Amending the act of March 10, 1949 (P. L. 30), entitled
"An act

2 relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising consolidating and changing the
5 laws relating thereto," providing for the loan of textbooks
6 and the furnishing of materials and equipment for the benefit
7 of children attending nonpublic schools in the Commonwealth.
8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:
10 Section 1. The act of March 10, 1949, known as the "Public
11 School Code of 1949," is amended by adding a section to read:
12 *Section 922-A. Loan of Textbooks, Instructional Materials*
13 *and Equipment, Nonpublic School Children.—(a) Legislative*
14 *Findings; Declaration of Policy. The welfare of the Commonwealth*
15 *requires that the present and future generations of school age*
16 *children be assured ample opportunity to develop to the fullest*

their intellectual capacities. To further this objective, the
Commonwealth provides, through tax funds of the Commonwealth,
textbooks and instructional materials free of charge to children
attending public schools within the Commonwealth. Approximately
one quarter of all children in the Commonwealth, in compliance
with the compulsory attendance provisions of this act, attend
nonpublic schools. Although their parents are taxpayers of the
Commonwealth, these children do not receive textbooks or
instructional materials from the Commonwealth. It is the intent
of the General Assembly by this enactment to assure such a
distribution of such educational aids that every school child in
the Commonwealth will equitably share in the benefits thereof.

(b) Definitions. The following terms, whenever used or
referred to in this section, shall have the following meanings,
except in those circumstances where the context clearly
indicates otherwise:

"Instructional equipment" means instructional equipment,
other than fixtures annexed to and forming part of the real
estate, which is suitable for and to be used by children and/or
teachers. The term includes but is not limited to projection
equipment, recording equipment, laboratory equipment, and any
other educational secular, neutral, non-ideological equipment as
may be of benefit to the instruction of nonpublic school
children and are presently or hereafter provided for public
school children of the Commonwealth.

"Instructional materials" means books, periodicals,
documents, pamphlets, photographs, reproductions, pictorial or
graphic works, musical scores, maps, charts, globes, sound
recordings, including but not limited to those on discs and
tapes, processed slides, transparencies, films, filmstrips,

—2—

kinescopes, and video tapes, or any other printed and published

materials of a similar nature made by any method now developed or hereafter to be developed. The term includes such other secular, neutral, non-ideological materials as are of benefit to the instruction of nonpublic school children and are presently or hereafter provided for public school children of the Commonwealth.

"Nonpublic school" means any school, other than a public school within the Commonwealth of Pennsylvania, wherein a resident of the Commonwealth may legally fulfill the compulsory school attendance requirements of this act and which meet the requirements of Title VI of the Civil Rights Act of 1964 (Public Law 88-352).

"Textbooks" means books, reusable workbooks, or manuals, whether bound or in looseleaf form, intended for use as a principal source of study material for a given class or group of students, a copy of which is expected to be available for the individual use of each pupil in such class or group. Such textbooks shall be textbooks which are acceptable for use in any public, elementary, or secondary school of the Commonwealth.

(c) Loan of Textbooks. The Secretary of Education directly, or through the intermediate units, shall have the power and duty to purchase textbooks and, upon individual request, to loan them to all children residing in the Commonwealth who are enrolled in grades kindergarten through twelve of a nonpublic school wherein the requirements of the compulsory attendance provisions of this act may be met. Such textbooks shall be loaned free to such children subject to such rules and regulations as may be prescribed by the Secretary of Education.

(d) Purchase of Books. The Secretary shall not be required

to purchase or otherwise acquire textbooks, pursuant to this section, the total cost of which, in any school year, shall

exceed an amount equal to ten dollars ($10) multiplied by the
number of children residing in the Commonwealth who on the first
day of October of such school year are enrolled in grades
kindergarten through twelve of a nonpublic school within the
Commonwealth in which the requirements of the compulsory
attendance provisions of this act may be met.

(e) Purchase of Instructional Materials and Equipment.

Pursuant to requests from the appropriate nonpublic school
official on behalf of nonpublic school pupils, the Secretary of
Education shall have the power and duty to purchase directly, or
through the intermediate units, or otherwise acquire, and to
loan to such nonpublic schools, instructional materials and
equipment, useful to the education of such children, the total
cost of which, in any school year, shall be an amount equal to
but not more than twenty-five dollars ($25) multiplied by the
number of children residing in the Commonwealth who on the first

day of October of such school year, are enrolled in grades
kindergarten through twelve of a nonpublic school in which the
requirements of the compulsory attendance provisions of this act
may be met.

Section 2. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid, in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Section 3. This act shall take effect immediately.

Appendix "C".

Act 204

Approved 9-22-72

Senate Amended

Prior Printer's No. 2845 Printer's No. 3156

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2150 Session of 1972

INTRODUCED BY MESSRS. M. P. MULLEN, GALLAGHER, SCANLON, BELLOMINI, BERKES, DOMBROWSKI, MALADY, PRENDERGAST, ENGLEHART, HOMER, KESTER, FEE, RENWICK, DOYLE, O'DONNELL, YAHNER, MURTHA, COMER, MEBUS, FOX, BRUNNER, LEDERER, RIEGER, RUSH, SCHMITT, WRIGHT, R. K. HAMILTON, GEISLER, MYERS, NEEDHAM, BUTERA, CROWLEY, KATZ, J. H. HAMILTON, COPPOLINO, MASTRANGELO, BONETTO, NOVAK, IRVIS, RAPPAPORT, CAPUTO, SCIRICA, PIEVSKY, EARLY, RYBAK, RUGGIERO, HALVERSON, FRANK J. LYNCH, GLEASON, MRS. GILLETTE, MRS. KELLY, MESSRS. JONES, BURKARDT, DORSEY, KLUNK, MCMONAGLE, LUTTY, PERRY, PEZAK AND MRS. ANDERSON, MAY 10, 1972

SENATOR MESSINGER, EDUCATION, IN SENATE, AS AMENDED, JUNE 20, 1972

AN ACT

1 Amending the act of August 27, 1971 (Act No. 92), entitled "An

2 act creating an authority for the purpose of avoiding

3 increased costs of public education by providing partial

4 reimbursement for nonpublic education and defining its powers

5 and duties," further providing for the Parent Reimbursement

6 Fund.

7 The General Assembly of the Commonwealth of Pennsylvania

8 hereby enacts as follows:

9 Section 1. Section 5, act of August 27, 1971 (Act No. 92),

10 known as the "Parent Reimbursement Act for Nonpublic Education,"

11 is amended to read:

12 Section 5. Parent Reimbursement Fund.—There is hereby

13 created for the special purpose of this act, a Parent

14 Reimbursement Fund. Beginning July 1, 1971, twenty-three per

15 cent, *and beginning July 1, 1972, ~~five~~ TEN per cent,* of the tax ←

—1—

1 revenue collected by the Department of Revenue, pursuant to the

2 act of July 22, 1970 (P. L. 513), known as the "Pennsylvania

Cigarette Tax Act," shall be paid into the State Treasury to the credit of the Parent Reimbursement Fund.

Moneys in the Parent Reimbursement Fund are hereby appropriated to the Pennsylvania Parent Assistance Authority, to be used solely for the purposes of this Act.

All expenses incurred in connection with the administration of this act shall be paid solely out of the Parent Reimbursement Fund.

Section 2. This Act shall take effect immediately.

ANSWER.

Defendants John C. Pittenger, Secretary of Education of the Commonwealth of Pennsylvania, and Grace M. Sloan, Treasurer of the Commonwealth of Pennsylvania, by their attorneys, answer to the Complaint herein as follows:

FIRST DEFENSE.

1. Denied. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 1 of the Complaint.

2. Denied except that Defendants admit that this action purports to be brought pursuant to Title 28 United States Code, Sections 1331, 1343(3), 2281, 2283, 2201 and 2202.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Denied. The acts which are legislation of the Commonwealth of Pennsylvania speak for themselves.

8. Denied. Defendants deny that plaintiffs have correctly summarized and characterized the acts. Defendants specifically deny that any of the acts direct payments to nonpublic church-related schools.

9. Denied. Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in paragraph 9 of the Complaint.

10. Admitted.

11. Denied. Defendants are advised by counsel that the allegations of paragraph 11 of the Complaint are conclusions of law which require no response.

12. Denied. Defendants are advised by counsel that the allegations of paragraph 12 of the Complaint are conclusions of law which require no response.

13. Defendants deny the allegation of paragraph 13 except that defendants admit that there is a genuine case and controversy with respect to those allegations of the Complaint which concern Act 194 of 1972 and Act 195 of 1972.

14. Denied. Defendants are advised by counsel that the allegations of paragraph 14 of the Complaint are conclusions of law which require no response.

SECOND DEFENSE.

The Complaint fails to state a claim against defendants upon which relief can be granted.

WHEREFORE, defendants demand judgments dismissing the Complaint, together with costs and disbursements in this action and such other relief as may be just and proper.

ISRAEL PACKEL,
Attorney General,
J. JUSTIN BLEWITT, JR.,
J. Justin Blewitt, Jr.,
Deputy Attorney General,
Attorneys for Defendants.

State Capitol Annex Bldg.,
Harrisburg, Pa.
717-787-3445

ANSWER OF INTERVENER DEFENDANTS, JOSE DIAZ, ET AL.

1. Denied as to averments of a class action. It is denied that the organizational Plaintiffs have standing to bring this action on their own behalf. It is denied that there exists any allocation or use of funds of the Commonwealth of Pennsylvania to finance the operations of religiously-affiliated schools.

2. It is denied that jurisdiction is conferred upon this Court with respect to the claims of the organizational Plaintiffs. With respect to the claims of the individual Plaintiffs, it is denied that they are denied the free exercise of religion. It is admitted that this action purports to be brought pursuant to Title 28 United States Code, Sections 1331, 1343(3), 2281, 2283, 2201 and 2202.

3. Admitted.

4. Denied. Intervener Defendants lack knowledge and information sufficient to form a belief as to the truth of the allegations in Paragraph 4 of the Complaint.

5. Admitted, but the organizational Plaintiffs do not have standing to bring this action.

6. Admitted.

7. (a) denied. Intervener Defendants admit that on July 12, 1972, the Governor signed into law Act 194. Intervener Defendants further admit that "Appendix a" is a true and correct copy of this Act. Intervener Defendants deny that Act 194 provides for the payment to nonpublic schools of any tax-raised funds. The Act, which is legislation of the Commonwealth of Pennsylvania and in writing, speaks for itself.

(b) denied. Intervener Defendants admit that on July 12, 1972 the Governor signed into law Act 195. Intervener Defendants further admit that "Appendix B" is a true and correct copy of this Act. Intervener Defendants deny that Plaintiffs have correctly stated the text of this Act. The Act, which is legislation of the Commonwealth of Pennsylvania and in writing, speaks for itself.

8. Denied as to each and every averment.

9. Denied with respect to the organizational Plaintiffs. As to the individual Plaintiffs, Intervener Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9.

10. Admitted.

11. Denied. Intervener Defendants are advised by counsel that the allegations of Paragraph 11 are conclusions of law which require no response.

12. Denied. Intervener Defendants are advised by counsel that the allegations of Paragraph 12 are conclusions of law which require no response.

13. Denied as to the organizational Plaintiffs who lack standing to bring this action. Denied as to the individual Plaintiffs who lack standing to bring this action with respect to their claim that they are denied the free exercise of religion.

14. Denied as false in fact and law.

FIRST DEFENSE.

15. The Complaint (a) fails to state a claim with respect to facial constitutionality of the Acts upon which relief can be granted and (b) fails to state a claim with respect to constitutionality of the Acts as applied upon which relief can be granted.

SECOND DEFENSE.

16. The organizational Plaintiffs have no standing to bring this action. The individual Plaintiffs have no standing to bring this action with respect to the Free Exercise Clause.

THIRD DEFENSE.

17. Intervener Defendants, Seth W. Watson, Jr. and Anne P. Watson, his wife, are parents of Ellen P. Watson, who is enrolled in a nonpublic school, as defined in the Act, which is non-church-related.

18. Intervener Defendants, Jose Diaz and Enilda Diaz, William Zimmerspitz and Nancy Zimmerspitz, Thomas J. Hassal and Marie Hassal, and Daniel F. X. Powell and Anna T. Powell, are parents of children who are enrolled in nonpublic schools, as defined in the Act, which are church-related.

19. With respect to the Intervener Defendants named in paragraph 17 above, the Complaint fails to state a claim under the Establishment Clause upon which relief can be granted.

20. With respect to the Intervener Defendants named in paragraph 18 above, the Complaint fails to state a claim under the Establishment Clause upon which relief can be granted.

FOURTH DEFENSE.

21. Intervener Defendants incorporate by reference the allegations of paragraph 17 and 18.

22. The Act provides public welfare benefits to all children of these parents in the form of the payments thereunder.

23. To deny to these children the benefits of the Act, solely because they attend nonpublic schools, would constitute a denial to them of the Equal Protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

FIFTH DEFENSE.

24. Intervener Defendants incorporate by reference the allegations of paragraphs 17 and 18.

25. The Act provides public welfare benefits to all children of these parents in the form of the payments thereunder.

26. To deny to the children of the parents named in paragraph 18 above, the benefits of the Act, solely because they exercise their constitutional right to attend church-related schools under the Compulsory Attendance Laws of the Commonwealth of Pennsylvania, would constitute a denial to them of the equal protection of the laws in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

SIXTH DEFENSE.

27. As to Plaintiffs' prayer for a preliminary injunction: the Plaintiffs will suffer no irreparable injury if a preliminary injunction is not granted.

28. The granting of a preliminary injunction will cause irreparable injury to the children of Intervener Defendants and to all children similarly situated.

29. The Plaintiffs are guilty of laches herein, requiring denial of any interlocutory relief.

WHEREFORE, Intervener Defendants pray the Court to dismiss the Complaint and enter judgment in favor of all Defendants, with costs.

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HEARING RE
APPLICATION FOR PRELIMINARY INJUNCTION.

Philadelphia, Pa., September 10, 1973.

Before HON. JOHN J. GIBBONS, JR., *Circuit Judge,* HON. A. LEON HIGGINBOTHAM, JR., *J.,* and HON. LOUIS C. BECHTLE, *J.*

PRESENT:

WOLF, BLOCK, SCHORR and SOLIS-COHEN
by WILLIAM P. THORN, ESQ.,
and
LEO PFEFFER, ESQ.,
for the Plaintiffs.

J. JUSTIN BLEWITT, JR., ESQ.,
Deputy Attorney General,
for the defendant.

BALL & SKELLY,
(Harrisburg, Pa.),
by WILLIAM B. BALL, ESQ.,
JOSEPH SKELLY, ESQ.,
and
STRADLEY, RONAN, STEVENS & YOUNG,
by C. CLARK HODGSON, JR., ESQ.,
for Intervenors.

DUANE, MORRIS & HECKSCHER,
by HENRY T. REATH, ESQ.,
and
JANE ELLIOTT, ESQ.,
for Intervenors Powell, Watson and Pennsylvania Association for Independent Schools.

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Judge Gibbons: Plaintiffs' interrogatories filed August 2nd?

Mr. Thorn: I have two more copies if that will be helpful.

If the court please, I would like to offer the affidavits of the individual plaintiffs to the effect that the statutes involved violate their religious conscience by forcing them to support religions with which they do not agree.

Mr. Blewitt: If the court please, we object to the introduction of the affidavits. In the first place, the affidavits don't even state that these acts violate their religious beliefs, and in the second place, if witnesses are available, I think they should be subject to cross-examination.

Judge Gibbons: Objection sustained.

Mr. Thorn: In that case, then, I will call Sylvia Meek as the plaintiffs' first witness.

SYLVIA MEEK, affirmed.

DIRECT EXAMINATION.

By Mr. Thorn:

Q. Mrs. Meek, you are one of the plaintiffs in this action, are you?

A. That's correct.

Q. What is your residence?

A. I live at 7147 Boyer Street which is in Philadelphia.

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Q. And, Mrs. Meek, are you a citizen of the United States?

A. Yes, I am.

Q. And are you a resident domiciled in Pennsylvania?

A. Yes, I am.

Q. Are you a taxpayer in the State of Pennsylvania?

A. Yes, I am.

Q. Now, Mrs. Meek, you are familiar with Acts No. 194 and 195 of 1972 adopted by the Legislature of the Commonwealth of Pennsylvania, approved by the Governor?

A. Yes, I am fully familiar with those Acts.

Q. And you are aware of their contents?

A. I am. I am aware of their contents.

Q. Mrs. Meek, what is your religious heritage?

A. I am of Jewish heritage.

Q. With respect to these Acts, will you tell the court what your religious beliefs are with respect to them?

A. As far as these Acts are concerned, I find that they violate my religious conscience because I firmly believe that the First Amendment does protect me in that there shall not be an establishment of any religion and there shall not be the prohibition of the free exercise of any religion.

These bills as far as I am concerned violate—extend aid to religious schools, and I feel that they affect me because as a taxpayer this money will be aiding either religion in general or a particular religion and as such it violates my

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conscience.

Mr. Thorn: I have no further questions.

Judge Gibbons: Any cross-examination?

Mr. Blewitt: If the court please, I would like to reverse if possible the order of cross-examination since the Commonwealth feels that these Acts are primarily for the benefit of children and defer to the intervenors representing the parents and have the Commonwealth cross-examine last.

Mr. Thorn: No objection.

CROSS-EXAMINATION.

By Mr. Ball:

Q. Mrs. Meek, you stated in answer to a question as to what your religion was that you are of the Jewish heritage. Are you a practitioner of the Jewish faith, Mrs. Meek?

A. I do not practice any religion, sir.

Q. Thank you. Therefore, my next question was to have been what specific teaching of your religion these Acts run contrary to? What specific teaching of the Jewish heritage do these Acts run contrary to?

A. I would like to answer it in this way: I do not believe that the Acts have to run contrary to any one specific religion. If I were an atheist, they would, too, be objectionable to me. Therefore, what is relevant is that these Acts do aid religion and I believe that is the issue in the case at hand.

Q. These Acts, then, they do not prevent or impede you in

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prayer according to your religious faith?

A. Me as an individual?

Q. Yes.

A. No.

Q. They don't impede you in carrying out any belief, religious belief which you have?

A. Perhaps they do. If these Acts give aid to religious schools, they in essence hurt me in terms of what I believe inasfar as my religious conscience is concerned.

Q. Now, Mrs. Meek, you signed a complaint in which you say in Paragraph 14 of it that you personally—and I am quoting now from what you have said in your complaint "Will suffer irreparable injury unless a preliminary and permanent injunction is granted." Now, in what way will you personally suffer injury if an injunction is not granted in this case?

Mr. Thorn: If the court please, I am going to object to that. That's a legal question and calls for a legal conclusion. The Supreme Court has held this: A violation of the First Amendment is an irreparable injury.

Judge Gibbons: Objection overruled. This is a non-jury case and I am going to allow a fair amount of latitude.

A. Well, my lawyer answered it very well. However, I shall put it in my own words, and that is that, of course, it violates my conscience and therefore as a taxpayer it does irreparable harm to me. The First Amendment is supposed to protect me personally,

[6]

me as an individual.

By Mr. Ball:

Q. Yes. It will not, then, result in any loss of income to you?

A. Oh, I don't know. If we talk about income in terms of actual cash in hand that I receive, as far as employment is concerned, that's one thing. If we talk about income in its total in terms of where my taxpayer money goes, that's another thing.

By the way, I think you ought to know that I have had children, five children in the public schools of Philadelphia, one of whom is still in the public schools of Philadelphia. The others have graduated.

Q. And these Acts, then, would they cause you any loss of property except in the sense that you say that you would have a tax contribution you would have to make under them? Otherwise, any loss of property or income?

A. We could have a discussion on that if we wanted to in terms of property and property that's involved in terms of funds for public schools and the fact that this money is going outside.

Q. I mean the loss of your personal property?

A. All right, but that's part of me. No, it does not extend to my house, no.

Mr. Ball: I think that will be all, Your Honor.

Judge Gibbons: Mr. Reath?

Mr. Reath: I have no questions, Your Honor.

Judge Gibbons: Mr. Blewitt?

[7]

Mr. Blewitt: Just one or two questions, Your Honor.

By Mr. Blewitt:

Q. If the court should find that this Act is constitutional, Mrs. Meek, so that the Act would remain in effect, will you still feel that this Act injures you?

A. Yes.

Q. So then I take it that if the court should decide that the Act is constitutional it would be irrelevant as far as you

are concerned, that decision would be irrelevant as far as you are concerned?

A. Of course not. Any decision that the court holds is relevant. How could it be irrelevant?

Q. However, if the Act should be found constitutional——

A. If the Act——

Q. —you will still feel that it injures you?

A. Yes.

Mr. Blewitt: I have no further questions.

Mr. Thorn: No further questions, Your Honor.

Mr. Reath: If your Honor please, at this time I move to strike the testimony of Mrs. Meek as not being constitutionally valid on the free exercise issue.

Judge Gibbons: We will consider that motion in connection with our ruling.

Call your next witness.

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Mr. Thorn: If the court please, I have one other individual plaintiff here. Perhaps counsel would stipulate that if called he would testify to the same effect that Mrs. Meek did.

Mr. Ball: Yes, I will be happy to stipulate to that.

Mr. Thorn: Mr. Blewitt?

Mr. Blewitt: I will stipulate.

Mr. Thorn: Mr. Reath, would you stipulate?

Mr. Reath: Yes.

Judge Gibbons: And who is this additional witness?

Mr. Thorn: Charles A. Weatherly.

Judge Gibbons: The parties have stipulated that Charles A. Weatherly, if he were called, would testify to the same effect as Sylvia Meek.

Mr. Thorn: Now, if the court please, that's the only testimony which we wish to introduce in this particular hearing.

We do wish to make argument, and Mr. Pfeffer will make that argument. I don't know whether you want to hear it now or at the conclusion of all the testimony.

Mr. Pfeffer: If Your Honor please, before we do that, there is one further concession which we would like the defendants to stipulate. We did it in chambers but apparently we couldn't get it in a written stipulation.

Paragraph 8 of our complaint states that:

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"Each of the Acts on its face and as construed and applied by the defendants authorizes and directs payments to or use of books, materials and equipment in schools which (1) are controlled by churches or religious organizations, (2) have as their purpose the teaching, propagation and promotion of a particular religious faith"—

I will not at this point go through the rest, but what we ask is a concession which as I say was made in chambers that under the Acts, whenever they use the terms "school" "private school" or "non-public school," it includes and does not disqualify the school or those attending that school by reason of the fact that the school is controlled by a church or religious organization if the school has as its purpose the teach-

ing, propagation and promotion of a particular religious faith and so on as alleged in Paragraph 8. We have practically received that, but not quite, in the answers to interrogatories in which the Commonwealth states that it doesn't ask the schools that question, it doesn't consider that in determining the application of the Act. We would just like to have that on the record, that as far as the defense is concerned, these factors do not disqualify a school or the students thereof under the terms of this Act.

Judge Gibbons: Mr. Blewitt?

Mr. Blewitt: We will defer to Mr. Ball.

Judge Gibbons: Mr. Ball?

Mr. Ball: Your Honor, we think the Act speaks for

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itself. The Act defines a non-public school as any school in which the compusory school attendance requirements of the law may be fulfilled, so there is no question whatever in our minds that a child attending a religiously-affiliated school would be a beneficiary of the Act. To go on to attempt to say anything with respect to characteristics of particular schools I hardly think we can do without having each school there to go into it, but it is clear that religiously-affiliated schools are schools in which the benefits of these Acts can be obtained.

Judge Gibbons: Mr. Reath?

Mr. Reath: My position is the same. I think the Act speaks for itself and therefore I cannot accept Mr. Pfeffer's statement as a matter of law, although

I would say to the court that I think his characterization of the Act from the Act itself is proper.

Judge Gibbons: Can we say this, that the Act permits any student attending any school meeting the requirements of the compulsory school attendance law and that religious schools in Pennsylvania meet the requirements of that law?

Mr. Pfeffer: We will accept that as a portion but not complete, because we agree to that, but we also urge—as I say, the answers to interrogatories in fact say so—that a religious school which nevertheless is controlled by churches or religious organizations is deemed by the Commonwealth of Pennsylvania as a non-public school which is eligible and whose students are eligible

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for the benefits of this Act.

Judge Gibbons: Mr. Pfeffer, I can't insist on counsel stipulating anything more than they are willing to stipulate and it seems to me that for your purpose you have an adequate stipulation.

Mr. Pfeffer: I don't think, Your Honor. We would like therefore to call the administrator of the Act for the Commonwealth as our witness.

Mr. Ball: We think what Mr. Pfeffer seeks is in the answers to the interrogatories. We think there is——

Judge Gibbons: If he is not satisfied with that, he is entitled to call a witness, and now is the time.

Mr. Thorn: Mr. Czekoski.

ROBERT J. CZEKOSKI, sworn.

DIRECT EXAMINATION.

By Mr. Pfeffer:

Q. Mr. Czekoski, what is your position now in respect to the statutes which are involved in this lawsuit?

A. I am the Coordinator of Non-Public School Services charged with the implementation of Acts 194 and 195.

Q. How long have you been in that position?

A. Just about one year now.

Q. I am sorry?

A. Just about one year.

[12]

Q. Just about one year?

Judge Bechtle: Speak loudly so we can all hear.

The Witness: Yes.

By Mr. Pfeffer:

Q. During the course of your administration of the Act, have you in any way held ineligible under the benefits of these Acts either a school or the pupils thereof by reason of the fact that the school is controlled by a church or a religious organization?

Mr. Blewitt: If the court please, I object to the question as being hypothetical in nature. There has been no establishment thus far that any of the participant schools are controlled by, in the language of Paragraph 8, a religious institution.

Judge Gibbons: I will permit the question.

Mr. Pfeffer: Pardon me?

Judge Gibbons: I will permit the question.

Judge Bechtle: The witness may answer.
You may answer.

A. In other words, I believe what the question is, if we declare ineligible any school that requested services or the loan of materials and equipment. This again we have not.

Judge Bechtle: Does this apply to students, too?

The Witness: We found no schools, for example, that requested services or requested materials or equipment or the loan of textbooks that did not fulfill the compulsory school

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attendance requirements.

By Mr. Pfeffer:

Q. In your administration of this Act have you in any way indicated, in any way acted upon the premise, that a school which is controlled by a church or religious organization, that school or its students would not be qualified to receive the benefits of the Act if it were otherwise eligible?

A. I am sorry, but I don't understand that question.

Q. In your administration of the Act have you taken any action or made any announcement to the effect that a school or its students would not be eligible because it is controlled by a church or a religious organization?

Mr. Blewitt: I object to the question, Your Honor. "Controlled" is a determination Mr. Czekoski can only reach if he were a student of the religious organizations and the teaching purposes of the various religious groups in the State of Pennsylvania. There has been no expert foundation laid for the answer to that question.

Judge Gibbons: I will let him answer it if he is able to. I understand his testimony thus far is his own criterion for granting aid is that the school in question fulfills the requirements of the compulsory attendance law. I don't know whether he can answer your question or not, but we will permit it.

A. We use a list of schools which the Bureau, our Bureau of Statistics compiles, in which children are enrolled in these

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non-public schools in Pennsylvania and then we have notified them of the two laws in question and sent them the necessary documents for participation if they so elect.

By Mr. Pfeffer:

Q. Does that list of schools or that communication bar schools which are controlled by churches or religious organizations in any way?

A. No, we send them to sectarian or non-sectarian schools.

Q. Now, does that list of schools or the instruction communications in any way bar schools or their students who have as their purpose teaching, propagation, promotion of a particular religious faith?

Mr. Blewitt: I must renew my objection to this series of questions.

Judge Gibbons: Overruled.

A. When we receive the list from the Bureau of Statistics, we don't know from that list whether or not a school happens to be sectarian or non-sectarian.

By Mr. Pfeffer:

Q. Well, I will ask the question again: Do your instructions or your administration of the Act bar a school or the

students thereof by reason of the fact that that school has as its purpose the teaching, propagation or promotion of a particular religious faith?

A. We do not get into whether or not a school—you know, what

[15]

kind of religious background, so I don't know how to answer that question.

Q. I think your answer, then, is—if I am correct—that you do not bar a school or the students thereof because the school has as its purpose the teaching, propagation and promotion of a particular religious faith.

A. Yes.

Judge Gibbons: Is that a question?

Mr. Pfeffer: I am asking if that's correct.

A. We do not bar students.

By Mr. Pfeffer:

Q. I am asking now whether in the same context you bar a school because it conducts operations, curriculums and programs to fulfill the purpose of teaching, propagation and promotion of a particular religious faith?

A. No, the only reason we would bar a school or the students enrolled in that school from participation is because they would not meet the compulsory school attendance requirements.

Q. But otherwise you would not bar them under my statement of the question?

A. No, we would not bar them for that reason.

Q. Subject to the same conditions solely, would you bar a school or its students because that particular school imposes religious restrictions on admissions?

A. I don't know of any schools that impose religious restrictions.

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Q. May I ask you to answer the question: Would your administration bar such school if it were to apply religious restrictions on admissions as you understand the Act?

A. To my knowledge we would not make a decision on that basis.

Q. Do you make any inquiry in granting benefits under the Act as to whether or not that school imposes religious restrictions on admissions?

A. No, we do not make any inquiry.

Q. Why do you not make inquiry?

A. According to law, the law defines the non-public school as being other than a public school and the students enrolled in that school are legally fulfilling the compulsory school attendance requirements.

Q. Therefore, if the school does impose religious restrictions on admissions, it would have no relevance to your administration of the Act?

A. No.

Q. I ask the same questions with respect to schools that require attendance at instruction in theology and religious doctrine, the same question?

A. The same answer would hold true.

Q. I ask the same question with respect to whether or not a school requires attendance or participation in religious worship?

A. It would be the same answer.

Q. I ask the same question, whether a school is an integral part

[17]

of the religious mission of the sponsoring church?

A. The same answer.

Q. I ask the same question, which has as a substantial or dominant purpose the inculcation of religious values?

A. It would be the same answer.

Q. I ask the same question with respect to a school which imposes religious restrictions on faculty appointments?

A. The same answer.

Q. Finally I ask the same question with respect to a school which imposes religious restrictions on what the faculty may teach?

A. The same answer.

Mr. Pfeffer: I have no further questions.

Judge Gibbons: When you said "The same answer," do I understand correctly that you make no such inquiry?

The Witness: We make no such inquiry.

By Mr. Pfeffer:

Q. And interpret the act not to make that relevant?

Judge Gibbons: I will sustain the objection to that. The purpose of the Act calls for a legal conclusion.

Mr. Pfeffer: Your Honor, he had already testified to that effect. I am repeating his testimony. He testified to that effect earlier that in the administration of the Act, he does not deem that to be a qualification; the only qualification is whether the school complies with the definition of a non-public school under the Act.

[18]

Judge Gibbons: I have ruled, Mr. Pfeffer. Do you have another question?

Mr. Pfeffer: No.

Mr. Blewitt: Do I understand the court's ruling to be that the testimony Mr. Czekoski has given as to the series of questions has been stricken?

Judge Gibbons: No, it has not. He has testified that he makes no such inquiry with respect to each of the areas of inquiry Mr. Pfeffer asked about. That's his only testimony so far.

Any cross-examination?

Mr. Blewitt: No, I don't, Your Honor.

Mr. Ball: No, Your Honor.

Mr. Reath: No, Your Honor.

Mr. Thorn: That's all the plaintiff wishes to introduce.

Judge Bechtle: You may step down.

Judge Gibbons: Do the plaintiffs rest, Mr. Thorn?

Mr. Thorn: Yes.

Judge Gibbons: Do the plaintiffs rest?

Mr. Thorn: Yes, they do.

Judge Gibbons: Mr. Blewitt, do you have any witnesses?

Mr. Blewitt: No, I don't, Your Honor.

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Judge Gibbons: Mr. Ball?

Mr. Ball: Yes, Your Honor.

I would like to call to the stand at this time Dr. William David Boesenhofer.

WILLIAM DAVID BOESENHOFER, sworn.

DIRECT EXAMINATION.

By Mr. Ball:

Q. Dr. Boesenhofer, what is your residence?

A. I live at 530 Evergreen Street in Emmaus, Pennsylvania.

Q. And would you tell the court, please, what your occupation is?

A. I am a psychologist employed by Allentown State Hospital and also by Colonial-Northampton Intermediate Unit No. 20.

Q. Will you kindly tell the court what your educational background consists of in chief?

A. I have a Bachelor of Arts Degree in Psychology from Upsala College in East Orange, New Jersey; Master in Education and Doctorate in Education, both areas, in counseling and psychology from Lehigh University in Bethlehem.

Q. Do you possess any State licenses or certificates or other State qualifications?

Mr. Thorn: If the court please, we will concede his qualifications as a psychologist.

Judge Gibbons: We are not familiar with them.

[20]

I would like to hear them so we know what area he is going to testify in.

Mr. Thorn: I didn't mean to preclude the court.

Judge Bechtle: We would like to know.

By Mr. Ball:

Q. Dr. Boesenhofer, do you possess any State licenses, certificates or other qualifications?

A. Through the Department of Education I am certified as a secondary counselor and also as a public school psychologist, and at the present time I am eligible for a State licensure in psychology. This is a new program in the process of being developed in the State.

Q. Are you a member of any professional organizations in your field?

A. I belong to the Lehigh Valley Psychological Association and also the American Psychological Association.

Q. Now, what have been your past employments?

A. From '64 through '69 I taught in the public schools. From '64 through '66 I taught special education in Berks County in Tulpehocken School District. This would have been with educable and trainable retarded children. And from '66 through '69 I taught again educable retarded children in the secondary level in Salisbury Township in Lehigh County.

Q. That brings us down to where you are presently employed?

A. Not quite. After I taught for five years, I had an academic

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residency, one year at Lehigh. During that period I had an internship at Allentown State Hospital, and in May of '69 I was a staff psychologist at the Neuropsychiatric Clinic for Allentown General Hospital, and since October of '70 I was been employed full time at Allentown State Hospital and with the Intermediate Unit I have been doing consultant work there. In February or March of '72, I started there.

Q. How long have you been employed by Intermediate Unit No. 20, Dr. Boesenhofer?

A. It was either February or March of '72 that I first began there, but it has only been since February of '73 that I have been working with non-public schools.

Q. All right. Now, what does your employment for Intermediate Unit No. 20 consist of?

A. My work there is primarily in counseling and consultation. Specifically, when a student is referred for an evaluation, I will interview the student, generally administer some tests, I will write up a report, make certain recommendations for the child, I will have conferences with parents, administrators, counselors, teachers, things of this sort.

Q. How important is that evaluation work you speak of?

Mr. Thorn: Objection. If the court please, I would like to ask for an offer of proof. We may be able to concede whatever he is going to testify to.

Judge Gibbons: Mr. Ball?

[22]

Mr. Ball: Yes, if it please the court, presently we have been establishing the professional and expert qualifications of Dr. Boesenhofer. We would then be moving directly with our questions into areas which very strongly bear upon issues of the primary effects of entanglement which are issues in this case, and in order to do that, we need to know the nature of the work that he is performing and under what circumstances it is being performed within, as we will bring out in a moment, the non-public schools.

Judge Gibbons: Mr. Thorn, to what would you be willing to stipulate in that respect?

Mr. Thorn: Well, I can't make a stipulation on entanglement, obviously, so I guess we will have to hear the testimony.

Mr. Pfeffer: We may stipulate to all the facts, not the conclusions, if Mr. Ball will state what factual witnesses he will call.

Judge Gibbons: It might be quicker to hear the witness than wait for the stipulation. Let's proceed.

By Mr. Ball:

Q. My question, then, Dr. Boesenhofer, was with respect to the importance or the role of the evaluation work you spoke of.

A. The evaluation is basically the beginning of working with the child. I think as such it kind of opens the door to correction, to remedial work with that child.

[23]

Q. Now, do you perform these services in non-public schools which are religiously affiliated?

A. Yes, I do.

Q. In your work with children of this kind, do you find that there are many such children?

A. Yes, I have.

Q. Can you characterize, can you tell us some of the characteristics of these children which call for your remedial services?

A. Most of the kids that I work with tend to be of average intelligence or above. That is, they are not mentally retarded, but for some reasons these kids are failing in school. Some of them tend to be very withdrawn in the classroom. Some of them may be very hyperactive, some of them very disruptive, various kinds of emotional or social problems which I think negatively affect their learning, and it is these things that I look at specifically.

Q. Are these kinds of children found in all schools, that is, public and non-public?

A. Yes, they are.

Q. Now, coming to the technique of your psychological evaluations, just a question or more on the nature of your work: What do your psychological evaluations actually consist of? What do you do?

A. With the child?

Q. Yes, and with others if there are others?

A. As I stated, with the child, first of all, I conduct a

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rather intensive interview. After that, I will administer certain tests such as an intelligence test, an achievement test, certain personality inventories. I will write up the report, make recommendations, meet with the teacher, suggest things that the teacher might do to work with the child. If necessary, I may refer to a community agency such as mental health, mental retardation, things that the guidance counselors in the school might do to work with the child, things of this type.

Q. Of what value are the psychological services which you render? Of what value are they to children in your professional opinion?

A. As I say, I think they are the door, they open the way to correction. I think it is very important to get at these kids who have difficulties early to hopefully get at some kind of correction, psychotherapy, counseling, possibly placement in some sort of special classroom environment.

Q. Were these psychological counseling services available in the non-public schools which you served prior to the enactment of Act 194?

A. It is kind of difficult to answer. Yes and no. They were available but in a roundabout way.

Q. What do you mean by "in a roundabout way"?

A. A child in a non-public school could be referred for a psychological evaluation prior to this Act. The differ-

ence was the child had to be brought into a public school to be seen. I could not go into a non-public school to see the child.

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I have had cases in the past where a child in a non-public school was brought into a public school for an evaluation, but the majority of children were not referred for this kind of thing.

Q. Comparing the present system under Act 194 in which you go to the schools in order to render service with the pre-existing roundabout way that you have described, which in your professional opinion renders the better service to children?

A. I believe it is much more desirable to go into the non-public—for me—to go into the non-public school.

Q. Dr. Boesenhofer, I would like to ask you what your religious affiliation is?

A. I belong to the Lutheran Church.

Q. Is it your understanding that under Act 194 there are any legal restraints respecting religion?

A. I am not sure what you mean.

Q. Are there any restraints which you understand you must observe with respect to religious inculcation or reflecting religion in connection with your rendering the service?

A. Yes. I am not permitted to reflect any kind of religious teachings.

Q. As a public employee, do you consider yourself bound to obey the laws of the Commonwealth, State and Federal Constitutions?

A. Yes, I do.

Q. In your offering of psychological services under Act 194 in

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non-public schools, will you tell the court whether you have ever attempted to influence children in favor of the Lutheran faith?

A. I never have done this, no.

Q. Have you introduced religious ideas, materials, or subject matter in connection with your work?

A. In no way at all.

Q. In your offering of these services, do you offer any of these services in Catholic schools?

A. Yes, I do.

Q. In your offering of these services in Catholic schools, have you encountered any disputes with religious authorities in those schools over the precise meaning and extent of the legal restraints against introduction of religion into your work?

A. There have been no disputes or any kinds of problems.

Q. Have you felt any pressure to conform to Catholic or other religious views?

A. None whatsoever.

Q. Has any sort of religious atmosphere in those schools caused you in any way to start reflecting religion in your work in those schools?

A. No.

Q. Suppose you felt, Dr. Boesenhofer, professionally, now, that a child in a Catholic school or a Moravian school or some other religious school would do better in a public institution, what would recommendation be?

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Mr. Thorn: Objection.

By Mr. Ball:

Q. Would you make a recommendation?

I will rephrase the question.

Mr. Thorn: I will withdraw the objection.

Mr. Pfeffer: We withdraw the objection.

Judge Bechtle: The question is, would you make a recommendation?

The Witness: Yes, I have made this type of recommendation already and a child is now in a public school.

By Mr. Ball:

Q. You have made a recommendation, may I ask, that he be transferred? Is that your answer?

A. Yes.

Q. Suppose you felt professionally that a particular child in a religiously-affiliated school, let's take a Catholic school, as an example, should be under a male teacher rather than under a female teacher who is a nun. What would your recommendation be? Would you make a recommendation?

A. I have already made this type of recommendation also.

Q. Did you encounter resistance or objection or pressure on the part of authorities in such Catholic school to your recommendation?

A. None whatsoever. They followed through with the ideas.

Q. Now, apart from these legal restraints on introducing religion under Act 194 which we have been talking about, are there

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any other restraints which you feel against your utilizing your professional services for purposes of religion?

A. Well, as a member of the American Psychological Association, there are ethical standards for psychologists and these certainly prohibit introducing any kind of religion into one's professional practice, so ethically I certainly could not reflect any religion or bootleg any religion through my work as a psychologist. There are, of course, penalties for not adhering to these ethical standards.

Mr. Ball: Thank you, Dr. Boesenhofer.
Those are all of our questions, Your Honor.

Mr. Reath: No questions, Your Honor.

Mr. Blewitt: No questions, Your Honor.

Judge Gibbons: Any cross-examination, Mr. Thorn?

Mr. Thorn: No, no questions.

Judge Gibbons: Judge Higginbotham?

By Judge Higginbotham:

Q. How many students have you seen since you started to work under this specific program?

A. Under Act 194?

Q. Yes, sir.

A. I have only seen 11 to date.

Q. 11? And of those 11 students you have seen, what type of school were they going to?

A. What type were they going to?

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Q. Yes.

A. They were in a non-public school.

Q. What type of non-public school?

A. Roman Catholic.

Q. How many times have you made a recommendation that a child be transferred from a non-public school to a public school?

A. One time.

Q. And you testified about what was available prior to the present system. I gather that you have seen children in a public school who had been referred there from a non-public school before?

A. That's correct.

Q. But you testified that apparently you didn't have that with any frequency?

A. No.

Q. Why? Was there just as much a need then?

A. The need was just as great. I could only speculate as to reasons.

Q. What is your most reasonable judgment as to why they weren't sent over to the public school?

A. Physically I think it is extremely inconvenient to have a child brought from one school building to another. They may be some distance away. Also I think from my aspect it is a lot more difficult for a child to see me for the first time, a stranger, in an unfamiliar school.

Q. Would the quality of your judgment, your professional judgment,

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and you capacity to help the kid be significantly deterred simply because the child had to come to the public school to be consulted by you or for you to see him?

A. It could be a detriment in some cases. It depends upon the child and the nature of his problem.

Judge Higginbotham: Thank you.

By Judge Bechtle:

Q. When you interview a student, where does the interview take place? What is the setting of the interview? Are you alone with the student?

A. Yes, I am.

Q. Did you ever interview with anyone present?

A. No, I didn't.

Q. Like a teacher?

A. No.

Q. And the tests that are given, the written tests, where does the underlying written material come from? Do you develop that yourself or where do you get those materials?

A. No, these are standardized what they consider classified tests published by Psychological Corporation.

Q. And the recommendations that you make you reduce to written form?

A. Yes, but I also have a conference with the teacher or counselor on the student.

Q. Usually alone?

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A. Yes.

Q. And who receives a copy in the usual case of your written report and recommendation?

A. It goes to the school. I assume it is kept in the counselor's office. The teacher would also see a copy of this but it would not be kept with the teacher because it is a confidential report.

Q. Right. And in addition to that filing, is there any copy filed with any official of the Commonwealth?

A. The Intermediate Unit keeps a copy of this.

Judge Bechtle: All right. That's all I have.

By Judge Gibbons:

Q. Does the parent get a copy?

A. No, they do not.

Q. In evaluating the children to whom you render service, is it significant in your evaluation for you to personally observe the school atmosphere?

A. At times, yes; generally, no.

Judge Gibbons: The court has no further questions. Do counsel?

Mr. Ball: We are ready to call our next witness, Your Honor.

Judge Bechtle: You may step down. Thank you.

Judge Gibbons: Call your next witness.

Mr. Reath: If Your Honor please, I wonder if I could

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ask a procedural question at this time as to how long we will sit? And I also direct attention of plaintiffs' counsel, with my brief which I filed, I filed affidavits from two head masters of schools setting forth facts relating to the harm that would flow to those schools if funds which have already been allocated for programs for this school year were to be interfered with by action of the court. This today is the opening of school for two of the schools and I do not have the head masters in court. I have one, Mr. John Jarvis, who has come down from Lancaster County.

I am prepared to rest on the affidavits that have been filed and I wanted to find out now whether or not counsel will require or whether the court would require the affiants being in court for cross-examination, because if so, then I would like to make arrangements with the heads of schools now and have some idea as to scheduling.

Judge Gibbons: Mr. Thorn?

Mr. Thorn: I haven't seen the affidavits. If I may look at the affidavits, we may be able to stipulate to that.

Mr. Reath: Well, they have been filed and served on you. I will be glad to give you a copy, Mr. Thorn, if you want to take a look at it during this morning's session.

(Discussion off the record at counsel table.)

Judge Gibbons: As to how long we will continue with the hearing, we will continue until such time as the parties

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have put in such evidence as they want to put in on the motion for a preliminary injunction.

Mr. Reath: Mr. Ball, how long do you think your witnesses will take?

Mr. Ball: Well, Mr. Reath, we are not calling our full list of witnesses. We have Miss Stopper, we have Sister Mary Dennis Donovan, and we have two parties. I don't think that the tail end of our testimony is going to be lengthy.

Judge Gibbons: Mr. Reath, suppose we come back to the question of your affidavits after Mr. Thorn has had a chance to read them if he hasn't seen them, and meanwhile Mr. Ball can proceed with his next witness.

Mr. Reath: Fine. That's fine with me.

Judge Bechtle: Would you care to look at the court's copy of the affidavits?

Mr. Pfeffer: We have them here.

I think I ought to make clear to the court our position. Our position is—this is why we did not cross-examine the previous witness—our position on this application, and this application only, not necessarily on the trial—is that the statute on its face is unconstitutional, and that our right to a preliminary injunction is predicated upon the facial unconstitutionality of the statute.

I think we ought to make that clear.

Judge Gibbons: Is that your only position?

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Mr. Pfeffer: That is the only position at this proceeding, not, of course, in the event of a trial of the issues, but our only position in this proceeding is the position that the statute is unconstitutional on its face and that our right to a preliminary injunction is predicated upon that assumption, upon that contention.

PAULINE DOROTHY STOPPER, sworn.

DIRECT EXAMINATION.

By Mr. Ball:

Q. Miss Stopper, where is your residence?

A. I live in Allentown, Pennsylvania. My address is 313 South Franklin Street.

Judge Bechtle: Speak loudly.

Judge Gibbons: You will have to speak up a little bit because we have to hear you way over on this side of the bench.

The Witness: O. K.

By Mr. Ball:

Q. What is your occupation?

A. I am a speech therapist.

Q. Would you state briefly for the court your educational background?

A. I have a bachelor's degree from Bloomsburg State College, Bloomsburg, and there I majored in speech pathology and audiology.

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Q. Do you possess any State licenses, certificates or other qualifications?

A. I am certified by the Department of Education here in Pennsylvania at the Instructional I level.

Q. How are you employed at the present time?

A. I am employed by the Carbon-Lehigh Intermediate Unit as a speech therapist.

Q. Now, what does your employment by this intermediate unit consist of, what do you do?

A. I work with children who have speech problems. That goes into stuttering, articulation, language, voice problems. It also consists of, for instance, screening the children, finding out who has a problem, then developing a case load and then actual speech therapy.

Q. How long have you been employed by Intermediate No. 21, Miss Stopper?

A. I was employed during the school year of '72 and '73. I worked in a summer speech program and now this year.

Q. Very well. As a professional speech therapist, is it your observation that there are many children who have speech problems?

A. I think with that question I should answer it giving you what our professional journals say. The American Speech and Hearing Association publishes a journal or several of them and in that they have indicated that there are between five and up to ten per cent of the public school population that have speech problems.

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The reason I emphasize "public school" is because that's where the research was done.

Now, when I took this job, out of simple professional interest, I decided to find out what types or what percentages my schools had in relation to what my profession says there should be. In some schools I found it rather high. There was one up to 19 per cent which I thought was extreme. There was one around 15. There were several around 11 per cent. The average was above what the American Speech and Hearing Association said there should be, and I thought that was an interest of the profession.

Q. What schools are they, public or non-public, to which you are referring now?

A. I work in the non-public schools.

Q. Now, therefore, you find that there are children who need speech therapy in both public and non-public schools?

A. That is correct. I do find, though, that there is a greater need in the non-public schools, and the reason I say that is because it is almost like a frontier. There have not been services—well, there have—let's say there have been services, but they haven't been adequate in any way.

For instance, out of the children that I have seen screened in my schools, I have located approximately 350 children that could use speech therapy, but when I went

into those schools, the only children that had been receiving speech therapy was the No. 17. There were 17 that were being taken from the parochial

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school into the public school to get their speech therapy.

Q. To what do you attribute this lack of service, to what do you attribute the fact that only 17 had had the speech therapy?

A. I have read what was published by my Intermediate Unit as the guidelines for accepting children from a parochial or non-public school into a public school speech program. That guideline said that it was up to the speech therapist's time and discretion whether to accept the children in their programs or not.

One of the problems there was, I think it was mentioned by the psychologist, transportation for one, but discretion of the speech therapist was also important, I found.

Q. What do you mean by "the discretion of the speech therapist"?

A. Well, if she could fit it into her case load, that was the major one, if she could fit it in, and if she already had a full case load, many times the children were refused.

Q. Was it your observation that she did or did not often have a full case load of public school children?

A. I would say many times that she had a full one, but I would also say that there was one that I know of specifically who came in. She was a public school therapist. And she came in a half hour earlier to take some children from a parochial school. So it depended on the therapist.

Q. In your professional opinion, Miss Stopper, what would be the effect of termination of the speech therapy services program which is provided under Act 194?

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A. I just feel very strongly that that would be very damaging to those children because, like I said, there are so many children need those services, and I am only one therapist, and I have enough children that it would be, you know, enough for three therapists, and I just feel that to terminate them would be very damaging to those kids. When you think of speech as what it is, you know, communication between two people, maybe I am partial because of my profession, but speech therapy to me is extremely important. Not only does it involve the social development of the child but it is educationally, too. It often interferes with his learning because teachers will tell me, "I can't understand this kid," and it really is interfering, so he not only becomes a problem to his teacher, to his parents at home sometimes, but himself and the children around him. He becomes a problem.

Q. Miss Stopper, what is your religious affiliation?

A. I am a Catholic.

Q. Is it your understanding that under Act 194 there are any restraints respecting introduction of religion in the services?

A. Yes, I understand the legal restraints. I have sat through several meetings where we were told and retold of those restraints.

Q. In your offering of speech therapy services under Act 194 in non-public schools, do you or have you attempted to influence children in favor of your religious faith?

A. No, I have not.

Q. As a public employee, do you consider yourself bound to obey

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the laws of the Commonwealth and the State and Federal Constitutions?

A. I do.

Q. Have you introduced religious ideas, materials or subject matter into your services?

A. Not in any way.

Q. In your offering of services in Catholic schools to which you refer, have you encountered any disputes with religious authorities in those schools over the precise meaning and extent of this legal restraint concerning non-introduction of religion?

A. I have not encountered any disputes. As a matter of fact, in several of my schools, the children are dismissed whether there is some religious activity or not. The principals insist that those children get those speech lessons.

Q. In those schools have you felt any pressure to express Catholic religious views?

A. No.

Q. Has any sort of religious atmosphere in these schools caused you in any way to start reflecting religion in your work in those schools?

A. No.

Q. Suppose you felt professionally that a child in Catholic schools would do better speech therapy-wise in a public institution. Would you make a recommendation?

A. You say speech therapy-wise? I am assuming you are referring to maybe a clinic or something a little more specialized?

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Q. Yes, if you felt, in other words, Miss Stopper, that for the good of that child, that child ought to be in a public institution where its speech and learning problems would be more adequately treated than in the Catholic school where you came to serve that child?

A. I would definitely refer them for that reason. I have referred them for other reasons associated to inade-

quate services in the parochial schools. For instance, a learning problem, a child was at the sixth grade level in school, but he was second grade reading level, and I recommended public school services, you know, transfer of the child for that reason.

Q. Now, apart from these legal restraints that we have been talking about on 194, are there other restraints which you recognize against your utilizing your professional services to inculcate or reflect religion?

A. The American Speech and Hearing Association has a certain code of ethics and in that there is nothing that recommends that I use any professional judgment, opinion and knowledge to reflect religion. There is not.

Mr. Ball: Thank you, Miss Stopper.
Those are all the questions, Your Honor.

Mr. Reath: No questions, Your Honor.

Mr. Thorn: No questions, Your Honor.

Mr. Blewitt: No questions:

Judge Gibbons: Call your next witness.

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Mr. Ball: Our next witness is Mr. David A. Horowitz.

DAVID A. HOROWITZ, sworn.

DIRECT EXAMINATION.

By Mr. Ball:

Q. Mr. Horowitz, what is your residence, please?
A. I live in Philadelphia at 22nd and the Parkway.

Q. What is your occupation?

A. I am Associate Superintendent for Schools for Special Services in the School District of Philadelphia.

Q. Would you please state for the court your educational background?

A. I have a graduate degree from Temple University and I have attended schools throughout the school system in Philadelphia through its high schools, taken my undergraduate and graduate work at Temple University.

Q. Now, what have been your past main employments, Mr. Horowitz?

A. I have been employed in the Philadelphia public schools. This is the beginning of my 40th year. I have been a teacher, a principal, a district superintendent. I have been in charge of curriculum development in this school system. I have been a deputy superintendent, presently an associate superintendent, reporting directly to the superintendent of schools and to the

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Board of Education.

Q. Are you a member of any professional organizations in your field?

A. Yes, I am. I am a member of an honorary society in the field of education which includes both academicians and practitioners, Phi Delta Kappa, a member of the American Association of School Administrators, the Schoolmen's Club locally here in Philadelphia.

Q. Have you published anything in your field, Mr. Horowitz?

A. I have published some articles and I have contributed to a great many, a large number, I should say, curriculum guides for teachers in the fields of mathematics, of science, English and social studies. I wrote a good portion of the Non-Discrimination Committee Report of the

School District of Philadelphia, which was issued about six or seven years ago.

Q. Have you been the recipient of any awards or any special recognition?

A. In 1964 my Alma Mater, Temple University, cited me as one of their distinguished alumnus members.

Q. As an associate superintendent, what are your areas of responsibility?

A. I have these areas of responsibility: pupil and personnel counseling, which includes the enforcement of the attendance laws, the counseling and guidance program of the School District of Philadelphia, the entire area of special education which includes

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a wide range of programs for different categories of handicapped children. The Federal programs are my responsibility, research, alternative programs, inter-system coordination, instructional computers, and early childhood education.

Q. In your capacity as an associate superintendent have you had any relationship or responsibility with respect to the Federal Elementary and Secondary Education Act?

A. Yes, I have. I have had very direct responsibility for that, reporting both to two former superintendents and the Board in those periods of time and the present superintendent and the Board of Education.

Q. Referring to Title I of that Act, would you tell the court in brief what you understand that part of the Act to be about?

A. Title I of the Elementary and Secondary Education Act provides educational services to economically-deprived children who in this instance reside in the County of Philadelphia no matter what schools they happen to attend.

Q. What kind of services are you speaking of?

A. We are speaking of services in basic education, certain enrichment programs, particularly on the secondary level, certain counseling and guidance programs, programs in bi-lingual education to help the growing number of Spanish surname children who are enrolled in the Philadelphia Public Schools.

Q. And Title II?

A. Title II is the Library Act. That one is administered directly

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by the State of Pennsylvania. Its allocation of funds are made separately to the School District of Philadelphia and to the non-public schools of Philadelphia directly.

Q. Are pupils in the non-public schools then included as beneficiaries of these E. S. E. A. programs?

A. Yes, they are, and according to the law, that is the intent.

Q. Does this include children in religiously-affiliated schools?

A. Yes, it does.

Q. Now, how long have these E. S. E. A. programs been operational in the School District of Philadelphia?

A. Well, in the nation as a whole, including Philadelphia, the Elementary and Secondary Education Act began to operate during the school year of '65, '66.

Q. How long have you personally been involved in these E. S. E. A. programs in the School District?

A. I have been the person responsible for the administration of these Acts from the very first day of the implementation of the Acts.

Q. Is there any comparison which can be made between these E. S. E. A. programs and the programs which are afforded under Acts 194 and 195?

A. Yes, there can be. In some ways they are similar in that there is a broad range of educational benefits that accrue to children, no matter where they happen to be enrolled.

Q. Are the services under Title I enjoyed by non-public school

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children on their own premises in whole or in part?

A. Yes, they are.

Q. With respect to Act 194, are you familiar with Act 194, Pennsylvania's Act 194 of 1972?

A. Yes, I am, sir.

Q. In what capacity? How did you come to be familiar with such a program?

A. I came to be familiar with it because in my range of responsibilities which includes Federal programming of a broad spectrum, that comes under the umbrella of my responsibilities and therefore as soon as the Act was passed, I made it my business to become fully acquainted with it.

Q. Now, respecting the auxiliary services under Act 194, have you formed an opinion as to the value, a professional opinion as to the value, of these services to children?

A. I can only judge it in this way, that the auxiliary services that have been enjoyed by pupils in public schools, the schools that I know best, that these services are important to them, to their development, to their education process, to their future vocation, and I can I think fairly assume that they would be just as valuable to any children enrolled in any schools.

Q. Are these auxiliary services under Act 194 part of the ordinary regular school curriculum or program?

A. In the public or non-public schools, sir?

Q. Well, in the non-public school?

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A. Are they? Generally not, to my best knowledge. They have existed in a rather spotty way and I say this only from second-hand information.

Q. I would like now——

If Your Honor please, may I approach the witness? I have an exhibit to show him.

Judge Gibbons: Yes.

By Mr. Ball:

Q. I am turning now to a part of Defendant's Exhibit D-19. Will you please tell the court what D-19 is and how it was prepared?

Mr. Thorn: If the court please, may we have a copy of that?

Mr. Pfeffer: I saw a copy this morning but we don't have one.

Judge Gibbons: Do you have any copies for opposing counsel and for the court, please?

Mr. Ball: Yes, we have.

(Discussion off the record at counsel table.)

A. D-19 is an excerpt from a required report that must go to the State on medical services that are provided within the County of Philadelphia, and if I may presume to say, that medical services in the County of Philadelphia are provided under the jurisdiction of the public school system for all pupils regardless of whether they attend public or non-public schools.

By Mr. Ball:

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Q. Looking at the audiometric test results as they are shown there, what does this indicate to you with respect to hearing problems of children?

A. Well, it indicates that there is a great need for audiometric testing for all children, and if you wish, I could cite the figures here for both public and parochial school children if you wish.

In this report in the public schools, audiometric tests were given to approximately 180,000 children, and approximately 5300 children failed which means that they had some hearing deficit ranging from mild to deafness, I would say.

In the parochial schools, that is, the Catholic parochial schools, about 68,000 children were tested and about 3500 failed.

In other private schools, about 2300, and 107 failed.

And some smaller figures going down that list which I can read out if you so wish or if the court should wish.

Q. I would like to direct your attention now, Mr. Horowitz, to Pages 2 through 9 of Exhibit D-19, and would you just very simply summarize what they show?

A. Page 2 indicates the standards that we in the Philadelphia Public Schools adhere to in furnishing and in equipping new schools, and they are given here according to various kinds of audio-visual equipment, recorders, screens, television, duplicators, projectors, listening centers, et cetera, et cetera. And they are given here as to the number per school and also the expenditure

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that would be involved.

Q. Is it your opinion professionally, Mr. Horowitz, that these standards would be applicable in the case of

children generally regardless of the school situation in which they are found?

A. There is no question in my mind regarding that, that they would be equally applicable no matter where the school, the children, rather, were receiving their education.

Q. Let me last then turn to Page 6 of D-19, Mr. Horowitz. What is the significance of that?

A. On Page 6 and following through, I believe, on 7 and 8 are the standards published by the American Library Association, equipment standards for what we now call instructional material centers, and you have standards here for the number of projectors, for teaching stations, the kinds of projectors, other kinds of audio-visual equipment, opaque projectors, 2 by 2's, T. V. receivers, micro projectors, record players, audio tape recorders, listening stations, projection carts and screens, closed-circuit T. V. which is just being introduced and is certainly a dream for the future in education, radio receivers, copying machines, duplicating machines, and so on and so forth, all the way down the list, and for fully-equipped instructional material centers that would be equipped to conduct a full-blown modern educational program, these are the standards that professionals after a great deal of discussion have come to the conclusion that these are necessary.

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Q. Now, Mr. Horowitz, in your professional opinion, focusing now on services under Act 194, in your opinion, can such services be afforded non-public school children at public centers?

A. At public schools?

Q. Yes.

A. No, I don't think so.

Q. Why is that?

A. Well, for many reasons, and depending on the specific, you know, item to which you are referring, where this equipment is being used, it is being fully utilized and cannot carry additional service or service time given to additional pupils who might come in plus the logistical problems of bringing in children or groups of children for a specific piece of an instructional program at a given time of the day and given weeks of the year. Logistically it just isn't possible.

Q. Let me ask you now with respect to the situation before Acts 194 and 195, did the School District of Philadelphia provide it to the non-public school population?

A. No, they have not.

Q. Could they?

A. No, they could not.

Q. Is it your impression as a school administrator concerned with Act 194 that non-public school children did receive these benefits prior to these Acts?

A. I believe—and this again is on information that has been

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reported to me because of my recent connection with the administration of these Acts—that where they existed, there was a range of not existing at all to very spotty kind of coverage of these kinds of services, sometimes depending on the ability of the individual parent to afford certain kinds of services.

Q. In your professional opinion, does the loan of textbooks, instructional materials and instructional equipment under Act 195 constitute a benefit to children?

A. I certainly believe that.

Q. In your professional opinion what would be the effect of the cessation of the programs under 194 and 195?

A. I think it would be a highly disruptive if not disasterous effect because the recent introduction of services and equipment that makes certain kinds of programs available or enriches the implementation of certain kinds of programs, this would suddenly cease after it has had a year or a little more than a year of implementation.

Q. In your capacity of administering in relation to E. S. E. A. and then again in connection with Acts 194 and 195, have you had relationships with the Roman Catholic non-public schools in Philadelphia?

A. Yes, I have.

Q. In that relationship have you known of situations of religious content or orientation arising out of or relating to those programs?

A. I know of none.

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Q. If there had been any situations would you likely have known of them?

A. I think so, because a number of the employees who report directly to me have responsibility to see to it that the provisions of the Act or Acts are strictly adhered to. In addition to that, sir, we meet periodically, oh, a few times every year, and quite regularly, as a new Act, for example, 194 and 195, when they were introduced, we set out very clearly what the constraints are in the use of services and in the purchase of equipment and textbooks and whatever else is made possible through these two Acts. We have so stated that at every meeting that we hold with non-public school administrators and teachers and we have put that in writing as well.

Q. You have put what in writing, Mr. Horowitz?

A. We have put in writing that they may not, they may not introduce religious content or adopt a religious orienta-

tion either in the teaching or in the service provided or in the selection of materials that are made available because of these two Acts.

Q. In your eight years of involvement in and responsibility concerning E. S. E. A. and now the 194 and 195 programs, have there been to your knowledge any instances wherein the religious atmosphere in a Catholic or other parochial school has caused the auxiliary service teachers in the school to start reflecting religion even unintentionally in the instruction they provide?

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A. I know of none. I know of no such situations or instances.

Q. Mr. Horowitz, I want to turn now to Defendant's Exhibit No. D-15 which I have handed you when I handed you D-19. I wonder if you will please tell the court what this is and how it came to be prepared?

A. This is a letter which I sent to the principals of all non-public schools. Do you want me to read this letter or just refer to it?

Q. I don't think that you need to read it unless the court desires it to be read, Mr. Horowitz. The court has the letter before it.

How did this come to be prepared, Mr. Horowitz?

A. This came to be prepared as a result of our annual concern with respect to strict adherence to these Acts which we have communicated in various meetings and conferences, large groups and small groups, as well, and these questions have come up.

Q. In the first year of operation of this Act, had the substance of that letter been transmitted orally to participants in the program?

A. Yes, sir, not only the first year but every succeeding year as well.

Q. And also to non-public school administrators concerned with these programs?

A. Yes, sir, routinely so.

Mr. Ball: I have no further questions, Your Honor.

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Mr. Reath: I have just one question.

By Mr. Reath:

Q. Dr. Horowitz, you made reference to E. S. E. A. I want to be sure I understand that you were referring there to a Federal Act; is that correct?

A. That's the Elementary and Secondary Education Act.

Q. And those are all funds that come from the Federal Government?

A. Yes, sir, and channeled through the State, sir.

Q. And those have been in effect as I understood you to say since 1966?

A. The year of '65-'66, yes, sir.

Q. All right. And that to a great extent the programs that are authorized under Acts 194 and 195 parallel the programs that are authorized by the Federal funds under E. S. E. A.?

A. There is a good deal of congruence there, yes, sir.

Mr. Reath: All right. Thank you.

Judge Gibbons: Mr. Thorn?

Mr. Thorn: No questions, Your Honor.

Judge Gibbons: Judge Higginbotham?

By Judge Higginbotham:

Q. Dr. Horowitz, in your breakdown, D-19, you categorize schools as public, parochial and private. How many of these schools which are beneficiaries of this program in your district are parochial and how many are private?

A. You mean Catholic parochial, sir?

[54]

Q. Well, I am using your terminology. Does "parochial" mean Roman Catholic?

A. Yes, Roman Catholic. I would say about 145 within the County of Philadelphia.

Q. And how many others?

A. I really don't know the exact number but they represent a wide range of religious affiliation.

Q. In one of the cases, the Lemon case, there was a statistic in it which pointed out that 96 per cent of the pupils there involved attended church-related schools. Are you able to give an estimate on the basis of your jurisdiction as to what per cent of the students attend church-related schools?

A. Of the non-public schools?

Q. Yes.

A. I would say a very large per cent. I don't know exactly but it must be at least 90 per cent.

Judge Higginbotham: Thank you. I have no further questions.

Judge Bechtle: I have none.

Judge Higginbotham: Good to see you again.

The witness: Good to see you.

Mr. Blewitt: May I ask one question?

Judge Gibbons: Yes.

By Mr. Blewitt:

Q. Mr. Horowitz, can you estimate if possible the effect of a

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preliminary injunction on teachers' contracts, employment contracts, if the court should conclude that Acts 194 and 195 would be suspended pending a final injunction?

A. Well——

Mr. Thorn: Excuse me. If the court please, there is not supposed to be any contracts since at the first hearing we had in this case in May the court pointed out that any such contracts would be made at the peril of the defendants.

Judge Gibbons: I did point that out at the first hearing. It might be interesting to know what the factual situation is——

Judge Bechtle: What those perils are.

A. Would you mind repeating your question, now?

By Mr. Blewitt:

Q. What the effect would be on teachers' contracts, teachers' and auxiliary service personnel contracts if the court should conclude that Acts 194 and 195 would be suspended pending a final injunction.

A. Well, we have no long-range contracts with any personnel with whom we have contracted or institutions that provide the personnel. It is on a year-to-year basis. There is nothing that would bring these people into the Federation of Teachers' Bargaining Unit, for example, or the bargaining unit of non-public schools. These are year-to-year contracts specifically stated for whatever service and the amount of service that's called for.

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Mr. Blewitt: Thank you.

Mr. Ball: Our next—excuse me, Your Honor.

Judge Gibbons: We will take a five-minute recess at this time.

(A recess was taken at 11:35 A. M.)

Judge Gibbons: Mr. Ball, do you have another witness?

Mr. Reath: If Your Honor please, I can report that Mr. Thorn and Mr. Pfeffer have agreed to the affidavits so that I will not have to call those two witnesses.

I have only one witness, Mr. John Jarvis, and I wonder would it be presumptuous of me to ask what the court's schedule was for recessing for lunch? I gather that Mr. Ball has only about another half hour of witnesses and I would take about 15 minutes with Mr. Jarvis and could get him on before the lunch break depending on what the court's schedule would be.

Judge Gibbons: If that's the case, we will finish without taking a lunch break.

Mr. Reath: Very well, sir.

Judge Gibbons: These affidavits to which you made reference, are they then to be offered in evidence?

Mr. Reath: Yes, sir.

Judge Gibbons: Let's get that over with now.

Mr. Pfeffer: Your Honor, I presume Your Honors are allowing time for argument for counsel on the legal issues which

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is really what our case is about.

Judge Gibbons: Yes. Well, we will finish the testimony before we take a lunch break.

Mr. Pfeffer: Thank you.

Judge Bechtle: Mr. Reath, which two persons' affidavits are you offering?

Mr. Reath: These are the affidavits, Judge Bechtle, that were attached and filed at the same time as our brief. One is the affidavit of Anne C. Shoemaker, the head mistress at the Baldwin School, with exhibits attached, and the other is the affidavit of Frederick C. Calder.

Judge Gibbons: Are they referred to in the joint final pre-trial order?

Mr. Reath: I don't believe that they are, sir.

Judge Gibbons: Then we had better give them different numbers.

Mr. Reath: All right, sir. So that perhaps for the record I will have a record copy of the affidavit which I will use now.

Do we have any exhibit numbers?

Judge Gibbons: D-20 and D-21.

Mr. Reath: All right.

Judge Gibbons: D-20 is the affidavit of whom?

Mr. Reath: Of Anne C. Shoemaker.

Judge Gibbons: And D-21?

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Mr. Reath: D-21 is the affidavit of Frederick C. Calder.

And at this time, if Your Honor please, I hand up the two affidavits, D-20 and D-21, and I offer them in evidence.

Judge Gibbons: Both of them will be marked in evidence.

Mr. Reath: I believe copies of those have been furnished to members of the court in connection with our briefs.

Judge Gibbons: Those exhibits which are marked in evidence we will leave in the possession of the court deputy for the time being. Would you mark those?

Judge Bechtle: Mr. Dunbar, mark those D-20 and D-21. They will be received in evidence and become part of the record.

(Affidavits of Anne C. Shoemaker and Frederick C. Calder were marked Exhibits D-20 and D-21 and received in evidence.)

Judge Gibbons: Mr. Ball, do you have another witness?

Mr. Ball: Do I?

Judge Bechtle: Let me just make this observation: I think those very two documents will become the court's exhibits.

Mrs. Elliott: Fine. I will return in just a moment.

Judge Bechtle: O.K. You will return them to Mr. Dunbar?

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Mrs. Elliott: Right.

Judge Bechtle: Thank you very much.

Mr. Ball: At this time the defendants would like to call to the stand Sister Mary Dennis Donovan.

SISTER MARY DENNIS DONOVAN, sworn.

DIRECT EXAMINATION.

By Mr. Ball:

Q. Sister, what is your residence, please?

A. I live at 2112 Sidney Street in Pittsburgh.

Q. What is your occupation?

A. Presently I am the Coordinator of Human Relations Education for the Parochial Schools in Pittsburgh.

Q. Would you tell the court, please, briefly your educational background?

A. I have a Bachelor of Science in Education from Duquesne University and a Master in Educational Administration. I have done some post-graduate work in sociology at St. Louis University.

Q. Now, what may have been your past main employment, Sister?

A. I was an elementary teacher for about 20 years and taught in high school social studies for about nine years and I have been principal of an elementary and a secondary school.

Q. What kind of schools are these?

A. Parochial schools.

Q. Catholic parochial schools?

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A. Catholic parochial schools.

Q. Are you a member of any professional organizations in your field?

A. Yes, I have been on the National Council of Social Studies Teachers, in the Middle States Council of Social Studies Teachers, the Association for Curriculum and Supervision from the NEA and then the National Catholic Education Association and the Pennsylvania State Education Association.

Q. Thank you. Have you published anything in your field, Sister?

A. Yes, sir, I have published three civics books for use in our schools.

Q. Could you identify these, please, who published them?

A. Back in 1948, "The Christian Citizen" was the first book published by Mentzer, Buch and Company, revised every two years up to 1962 when it was taken over by Holt, Rinehart and Winston, and then in 1967 I did another one called "The Responsible Citizen," and a third one back in the 1950's—I am not sure what year—"The Teaching of Civics in the Catholic Elementary School."

Q. Have you been the recipient of any awards or special recognition?

A. Yes. The most recent was from the United States Civil Service Commission, a special award for a program that I developed with the OIC.

Q. What is the OIC, please?

A. Office of Industrial Organization, I believe. It is training

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black employees, and we worked with the Post Office in Pittsburgh.

Q. Have you participated in any public or community programs?

A. Yes, very much so. I belonged to the Women in Urban Crises with is an ecumenical group of women organized at the time of the racial disturbances in Pittsburgh and has been very active since. I was on the committee that established Call for Action in Pittsburgh which is the KDKA, and then volunteers from our organization, manning phones, taking care of—I belonged to the Public Affairs Committee at the YW. I was on the Public School Re-Organization Advisory Committee. I belonged to the Community Action, the South Side Neighborhood Community Action Group in Pittsburgh.

Q. Sister Mary Dennis, are you familiar with Pennsylvania's Acts 194 and 195?

A. Yes, reasonably so.

Q. Have you in any way been involved in those programs?

A. Yes.

Q. Could you state in what way?

A. In my capacity as Coordinator of Human Relations Education I advised on particularly group counseling materials, films, and so on, and then conducted several work shops or arranged for several work shops for numbers of teachers who would be trained in human development, group guidance skills.

Q. Focusing now on Act 194, auxiliary services, psychological service, speech, hearing and so on, as an educator and an educational

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administrator, what is your professional opinion as to the value of these programs for children?

A. I consider them very valuable because from my point of view all of these things at one time were considered luxuries and now they are absolutely essential to the chil-

dren's being receptive to the educational opportunities that are offered to them. The whole society is suffering from the effects of rapid change and I believe children also and the speech therapy and the psychological testing and the area that I am in, the group guidance, human development, I think, are very, very essential today. They are not luxuries any more.

Q. You mean in the case of all children, non-public school children as well as public school children?

A. Definitely all children, yes.

Q. Did non-public school children enjoy benefits in the Diocesan schools of Pittsburgh prior to providing them under Act 194?

A. I am not sure I understand the question.

Q. In the schools of Pittsburgh, the non-public Diocesan schools in Pittsburgh with which you have been associated, did children get these services prior to Act 194?

A. In a very limited and spotty way. With things as they are now, many of these require specialists who require a great deal more money than we have had. Through the E. S. E. A., Title I, Title III, some of our children received some of these services, but the E. S. E. A. seemed to be narrowing down to more and more service for

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fewer and fewer children and they weren't reaching the large percentage of children in the school.

Q. In your professional opinion what would be the effect of the cessation of the programs now being conducted under 194 and 195?

A. Well, I certainly think the fact that we have had those, the opportunity to get some of those services, as the young lady that was the speech therapist here said, many of these cases have come to light. We are now aware of

problems which we were only very unscientifically aware of before because only the very obvious cases were taken care of and I think to end them now would certainly not remedy the problem, the problem being these children need services, and I just think it would be disastrous to the educational program.

Q. Now, Sister, are you a member of a Roman Catholic teaching order?

A. I am.

Q. What is the name of that order?

A. I belong to the Sisters of St. Joseph of Baden, Pennsylvania.

Q. Is it your understanding that there are legal restraints on these Acts with respect to religious inculcation?

A. Definitely.

Q. How did you come to know about these restraints?

A. Well, we have repeated in very emphatic directives given to us in regular meetings—I would say the administrative staff and the principals meet with our superintendent, John Chico and the

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coordinators of Government programs on an average of once every two months, and I don't believe we have had a meeting where this hasn't been emphasized.

Q. Now, you have said, Sister, that you are a member of a Roman Catholic teaching order, the Sisters of St. Joseph. Do the rules of your religious order require expressly or by implication that you not observe these restraints against religious inculcation under Act 194 and 195?

A. Certainly not. The rules of our community in no way interfere with our professional life. We are in many other professions besides teaching and the rules of the community don't affect that at all.

Q. Do the teachings of the Catholic Church require expressly or by implication that you do not observe those restraints?

A. Certainly not. On the contrary, I would think the rules of any religion would tell you to follow your professional integrity and if this is a regulation, your own personal and professional integrity would mean that you did observe it, and certainly not.

Q. Are you saying that there is nothing in the rules of your religious order or in the teaching of the Catholic Church that requires you to inculcate or reflect religion in the work that you do professionally?

A. On the contrary I think implied in it would be that we observe the law.

Q. Now, suppose, Sister, let's just take Act 195, and a film

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projector is loaned to a Catholic school of which you are in charge, what would inhibit you from utilizing that film projector in order to put in a Catholic religious film to show the children, this film projector having come into your possession under Act 195?

A. I wouldn't use it for that purpose.

Q. What would stop you?

A. My own personal integrity and obedience to that law. I would know that I was not to use it for that and I know a school that I was in just last week where I specifically asked the principal what she did in a case like that and she said thay used their own funds to get another projector to use for that kind of film.

Mr. Ball: I have no further questions, Your Honor.

Mr. Blewitt: None, Your Honor.

Mr. Reath: No questions, Your Honor.

Mr. Thorn: No questions, Your Honor.

Judge Gibbons: Judge Higginbotham?

Judge Higginbotham: No questions.

Judge Bechtle: Thank you, Sister.

Mr. Ball: The defendant would call as their next witness, Your Honor, Mrs. Harry Bense.

MAY BENSE, sworn.

DIRECT EXAMINATION.

By Mr. Ball:

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Q. What is your residence, Mrs. Bense?

A. I live at 331 Stanwood Street in Philadelphia.

Q. Are you married?

A. Yes, I am.

Q. What is your husband's occupation, Mrs. Bense?

A. He is a lieutenant in the Police Department.

Q. I couldn't quite hear you.

A. He is a lieutenant in the Police Department here in Philadelphia.

Q. In the City of Philadelphia? Thank you.

Do you have children?

A. Yes, I have.

Q. And what are their respective names and ages?

A. Kathleen, age 19; Danita, age 12; Johnna, 8; and Paula, 7.

Q. Now, other than as a housewife, have you had an occupation or employment?

A. Yes, I have.

Q. What would that be?

A. As a parent aid, Title I, at Archbishop Ryan Memorial Institute for the Deaf.

Q. At Archbishop Ryan Memorial Institute for the Deaf were you paid for your services as a teacher aid at that school for the deaf?

A. Yes, I was.

Q. Who paid you?

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A. I was paid. The funds came from the Federal fund.

Q. Now, what were your duties as a teacher aid under that program?

A. I would take a child from a classroom or a small group to reinforce what had already been taught to the child in a previous lesson. I would take the child out and use other materials to reinforce the previous lesson.

Q. How long were you employed at the Institute for the Deaf?

A. Two years.

Q. Are you familiar, Mrs. Bense, in general with Pennsylvania Act 195?

A. Yes, I am.

Q. Did any of your work as a teacher aid at the Institute for the Deaf relate to benefits under Act 195?

A. Yes, they did.

Q. Will you tell the court, please, in what way?

A. Well, we had these children. Deaf children do not have a language and the best way to get a language is to start with the three year olds, four year olds with visual aids, and we needed projectors and we had a movie projector that was from 1939. It wasn't quite ready to accept

a lot of films and different things that they had. We had books, materials.

Q. Are these supplied under Act 195, these books and materials and visual aids of which you speak?

A. Yes, pictures.

Q. Are these identified in any way as belonging to anyone?

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A. Yes, the Commonwealth of Pennsylvania is clearly on everything, plastic containers, anything.

Q. Did you understand both the materials and so on to be the property of the Commonwealth of Pennsylvania?

A. Yes, I do.

Q. Now, having seen Act 195 in operation what is your opinion as to a teacher aid if any of the practical effects of these Acts, of this Act?

A. The practical effects are the school had materials for the children. These books that they had were easy for the children to handle, things that came from 195, books, pictures, visual aids that the schools could not purchase without 195, and the children have a need to keep a small child, to have their interest. They might stay five to ten minutes, but with all these new aids that we were getting, you could keep the child's interest from five to ten minutes but still have other material on the same subject a little bit different to hold their interest longer so you could build up anywhere their attention span from three minutes as a small child up until 20, 25 minutes.

Q. Now, Mrs. Bense, you mentioned among your children your daughter, Johnna?

A. Right.

Q. Age 8, I believe. In thinking now again of the practical effects of Act 195 I would like to turn your attention to Johnna. In what school is she presently enrolled?

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A. Johnna presently is enrolled in St. Cecilia's School.

Q. Is that a school for exceptional children?

A. No, it is not.

Q. It is not, you say?

A. No.

Q. Would you please tell the court how Johnna came to be enrolled in St. Cecilia's School?

A. Johnna——

Q. I would like to strike the question. Excuse me, Your Honors.

Is St. Cecilia's School a school for normal children, a regular school?

A. Yes, it is.

Q. Thank you. How did she come to be enrolled in St. Cecilia's School?

A. Johnna is a deaf child. She has a 95 decible loss. She attended Archbishop Ryan Memorial Institute from the time she was two, two and a half. She is a Rubella child who is hyperactive. We sent her to Archbishop Ryan for help, to calm her down. She was very frustrated. She had no language. She could not communicate. She had normal intelligence but she just had no way of communicating with us.

We sent her there. We had problems with the child. Now, through materials that we have, we used to have to go through magazines looking for types of pictures.

Q. Where was this you had to do that?

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A. When she was in Archbishop Ryan, when she first started.

Q. Yes.

A. There were different—they had materials, but then we had to try to find other pictures for not only her but

other small children. Then all these Title I came into being. We had some of their materials to use. 195 brought more materials in. Johnna progressed to such a point that now she is able to go—within one year she progressed, the reading, and her reading increased from a first grade level. She is up to a third grade level just in one year. She was in actually like fourth, supposed to be the fourth grade.

Q. To what do you attribute this improvement, Mrs. Bense?

A. To the instructional materials that we were able to obtain.

Q. They were of such a quality?

A. High quality and enhanced her learning ability to such a—she had a burst of energy that she wanted to learn.

Judge Gibbons: I think that's the end of all the questions to you.

Mr. Reath: No questions.

Mr. Thorn: No questions.

Mr. Blewitt: No questions.

Judge Bechtle: You may step down. Thank you.

Mr. Ball: We would like to call now to the stand Mr. Daniel F. X. Powell.

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DANIEL F. X. POWELL, sworn.

DIRECT EXAMINATION.

By Mr. Ball:

Q. Mr. Powell, what is your residence, please?

A. My residence is 712 Suellen Drive in King of Prussia.

Q. Are you married, Mr. Powell?

A. Pardon?

Q. Are you married?

A. Yes, I am.

Q. I am sorry, I didn't let you state the town.

A. King of Prussia.

Q. Thank you.

You are married, sir?

A. Yes, I am.

Q. What is your age?

A. My age is 40.

Q. What is your occupation, Mr. Powell?

A. I am a unit manager with Allstate Insurance Company.

Q. Would you tell the court your present salary?

A. My present salary is $15,600 a year.

Q. Does that constitute your total family income?

A. Yes, it does.

Q. How many children do you have, Mr. Powell?

A. Four.

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Q. What are their respective names and ages?

A. Mary Ann is 13, Kathleen is 10, Daniel, Jr. is 9 and Christopher is 5.

Q. In what school is Mary Ann enrolled, Mr. Powell?

A. Mary Ann enrolled this year in Archbishop Carroll High School.

Q. Is that a religiously-affiliated school?

A. Yes, it is.

Q. What religion?

A. That's a Catholic high school.

Q. Now, to your knowledge is Mary Ann fulfilling the requirements of the State compulsory attendance requirements by her enrollment at Archbishop Carroll High School?

A. Yes, she is.

Q. Why did you select this school for Mary Ann?

A. I feel that I want my children to go to that particular school. The school I feel gives them a good education, good discipline, and by conscience, I feel that they get the religious education that I desire that they should get.

Q. Is this matter of conscience of which you speak something which you consider binding upon yourself?

A. I do personally, yes.

Q. Are you familiar with Pennsylvania Acts 194 and 195?

A. In general I am familiar with them.

Q. Is Mary Ann receiving benefits under these Acts, Mr. Powell?

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A. Yes, she will be receiving and is receiving this year benefits under the Act.

Q. I wonder if you would describe to the court some of the benefits she is receiving under these Acts?

A. Under Act 194 she receives auxiliary services that are provided through the school, through the high school. These services include guidance counseling, remedial reading services—while they are at the school, she doesn't need them; they are available to her if she did—psychological, a school psychologist is available under the Act 194.

Under Act 195 she has a loan of textbooks. In addition to that, there is instructional material in the school, film strips, films, projectors, reference books which would come under Act 195.

Q. To your knowledge were these benefits available for children that enrolled at Archbishop Carroll High School for years prior to 194 and 195?

A. No, they were not.

Q. Did you as a parent there have to pay for the textbooks prior to the 1972-73 school year?

A. In prior years, they did. I did not personally because this is Mary Ann's first year, but I do know that they did have to pay for the textbooks in prior years.

Q. Do you know that as a parent of a child now enrolled at Archbishop Carroll High School for Girls?

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A. Pardon?

Q. I say do you know this as a parent who has a child enrolled in Archbishop Carroll High School?

A. There is still a book payment in addition to the Acts right now.

Q. Are you aware that this lawsuit that we are here about in court today is aimed at stopping the State from providing these benefits to your child?

A. Yes, I am. That's why I am here.

Q. That is why you are here, did you say?

A. Yes.

Q. If these Acts were declared unconstitutional and the benefits of them were cut off from your child what effect would this have on their education and their welfare in your opinion?

A. In my opinion it would certainly lower the standards of the education that would be available to the children because they would not have the availability of the textbooks and the instruction material or the guidance that is available now under the Acts.

Q. How many people are dependent on your income for support, Mr. Powell?

A. Six.

Q. Do you receive any welfare money or any public assistance?

A. No, I do not.

Q. Has your cost of living changed materially in the past two

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years up or down?

A. Like everybody else, it has gone up considerably.

Q. Are you a taxpayer?

A. Yes, I am.

Q. Specifically do you pay your public school taxes?

A. Yes, I do.

Q. Do you also support the non-public schools which your children attend out of your own pocket?

A. Yes, I do support them.

Q. You have testified about the benefits which your children are receiving under these Acts. Do you understand that these books and services supplied under 194 and 195 are required to be non-religious in nature?

A. Yes, I understand that.

Q. Now, it does not disturb your religious conscience as a Catholic that some elements of the instructional process in your children's school will be strictly secular or non-religious in nature?

A. In no way would this obstruct my conscience, in any way. The education itself is secular in particular. The religious education aspect is religious, but the rest of it is secular education.

Mr. Ball: I have no further questions of this witness, Your Honor.

Mr. Reath: No questions.

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Mr. Blewitt: No questions.

Mr. Thorn: No questions.

Judge Gibbons: You may step down.

The Witness: Thank you.

Mr. Ball: I will ask, is Mr. Zimmersmith present in the courtroom?

We had hoped to call Mr. Zimmersmith, but he is not here.

Judge Gibbons: Mr. Reath, is your witness ready?

Mr. Reath: Yes.

Judge Gibbons: Mr. Ball, is that your last witness?

Mr. Ball: Your Honor, we have here and I would like to offer to the court the deposition of Mr. Carmen Brutto. He was not available for trial and we took his deposition in Harrisburg, I and Mr. Thorn, on September 4th.

Judge Gibbons: Are you offering the deposition in evidence?

Mr. Ball: Yes, Your Honor.

Judge Gibbons: Has that been marked in the pre-trial order?

Mr. Ball: No, it was not, Your Honor.

Judge Gibbons: You referred to it?

Mr. Ball: We listed Mr. Brutto as a witness.

Judge Gibbons: Was it given a number?

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Mr. Ball: It was not listed as an exhibit because he was a witness.

Judge Gibbons: Mark it D-22 as an exhibit for the moment.

(Deposition of Carmen Brutto was marked Exhibit D-22 for identification.)

Judge Gibbons: I will hear Mr. Thorn.

Mr. Thorn: I have no objection to the admission, but I would like to have a copy of it.

Judge Gibbons: It will be marked in evidence.

Mr. Ball: You did not receive a copy?

Judge Gibbons: And would you furnish a copy to Mr. Thorn?

Mr. Ball: Yes, sir.

(Exhibit D-22 was received in evidence.)

Judge Gibbons: That's the deposition of whom?

Judge Bechtle: Carmen Brutto.

(Discussion off the record.)

Mr. Ball: We also offer at this time, Your Honor, all of the exhibits which are listed in the joint pre-trial order beginning with Defendant's Exhibit No. 1 and concluding, I believe, with Defendant's Exhibit No. 19.

Judge Gibbons: Mr. Thorn?

Mr. Thorn: I have no objection, but I believe D-1 is incomplete. There is an addendum which I have included in P-1

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dated March of 1973, a two-page addendum. I have some copies of it but I don't have it here right now.

Mr. Ball: With Your Honor's permission, since both parties were submitting guidelines, we will simply leave ours marked as D-1.

P-1 contains the addendum.

Would that be satisfactory?

Mr. Thorn: Satisfactory.

Judge Gibbons: P-1 is not yet in evidence.

Mr. Thorn: Well, it was supposed to be part of the stipulation, Your Honor.

Judge Bechtle: Do I take it that you had both agreed, that's why it is marked P-1 and D-1, that this was an exhibit that you both agreed upon?

Mr. Ball: Yes. Our guidelines are also marked D-1. We are happy to strike this and substitute P-1 because it has come to Mr. Thorn's attention that there are addenda to the guidelines.

Judge Gibbons: Leave it marked as in the pre-trial order and then we will admit in evidence P-1 and D-2 through D-19 listed in the pre-trial order.

Mr. Ball: Very well, Your Honor.

(Exhibits P-1, and D-2 through D-19, were received in evidence.)

Judge Gibbons: Leave complete copies with the court

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reporter and we will mark them.

We have previously admitted D-20, 21 and 22.

Judge Bechtle: I think the thing to do now, Mr. Thorn, is to give the court reporter one to mark as the official court exhibit copy and mark that P-1.

Mr. Thorn: I understand.

Judge Bechtle: That's all right. And then if there are additional copies, it would be helpful.

Mr. Thorn: I see. Just leave one?

Judge Bechtle: Just leave one for the court reporter's official record.

Mr. Ball: Then we had D-1 through D-19.

Judge Bechtle: Yes, fine.

Judge Gibbons: Mr. Ball, do you have another witness or are we ready for Mr. Reath?

Mr. Ball: We have no more witnesses.

Mr. Reath: Mr. Jarvis?

JOHN JARVIS, sworn.

DIRECT EXAMINATION.

By Mr. Reath:

Q. Mr. Jarvis, where do you reside?

A. 230 North Charlotte Street, Lancaster, Pennsylvania.

Q. And what is your relationship with the Lancaster Country Day School?

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A. I am the head master of that school.

Q. And for how many years have you been?

A. I believe I am in my ninth year now.

Q. And tell the court if you would, please, very briefly with respect to your professional qualifications and educational background.

A. I graduated from the University of St. Anders, Scotland, and then immigrated to this country and attended the University of Pennsylvania where I got a Master's in Education Degree. I have taught in the Philadelphia area for the Episcopal Academy for 16 years until I went to Lancaster as the head master.

Q. And tell us what is the enrollment of the Lancaster Country Day School?

A. We have 300 students, a co-educational school.

Q. And do you also have scholarship students in addition to full tuition paying students?

A. We feel that this is a very important element in the school, that we should have a cross section, and we have 15 per cent of our students on scholarship.

Q. And what does that amount to in terms of dollar aid?

A. About $45,000.

Q. And could you just characterize for us the nature of the scholarship, of the students receiving scholarship aid?

A. Based on merit and need, and we have a cross section of race, color and creed that I think we can be very proud of.

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Q. Now, as the head master of the Lancaster Country Day School, did you apply for and did you receive benefits

during the school year 1972-73 under Pennsylvania Acts 194 and 195?

A. Yes. Under 194 we were able to apply and were greatly assisted by improving the quality of the testing program which we had not been able to afford up to that time. That was under 194.

Under 195 we were able to apply on loan certain equipment that we had not been able to afford prior to that time and has been of great benefit to the individual students in the school.

Q. And did you or persons under your control attend and participate in meetings with the Intermediate Unit with respect to the allocation of funds, the administration of funds, under Acts 194 and 195?

A. I have not attended these meetings but the assistant head master did. We have had excellent cooperation with the Intermediate Unit 13 which is Lancaster and Lebanon. They have been very helpful, and we have had many meetings on how the program should be run, what we can do, and we have tried to follow their instructions precisely.

Q. And over what period of time were these various planning meetings held?

A. They began, I would say, almost immediately after the Act was passed, some time in 1972, but there was a period of no one knew what the organization was going to be so we really had to get

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into 1973 before anything really started.

Q. But there were meetings, were there, in 1973 during the course of the school year?

A. Yes.

Q. At which time plans were made?

A. Yes.

Q. For the implementation of the program to be carried out this year?

A. Yes.

Q. Now, with respect to the school year '73-'74, have you worked out with the Intermediate Unit plans for certain auxiliary services to be made available to the students attending your school?

A. This Act 194 I think is a very valuable and important educational asset. Under this Act, now, we can obtain services that we couldn't obtain before, and we have never been able to afford a full-time remedial reading teacher, and in deciding what we should do, we felt that this would be of the greatest benefit to the students, and we have now made arrangements with the Intermediate Unit and we have hired this individual who comes in from 11:00 to 3:00 every day in the school year, and though school has only started two days, we already see real pluses in this situation. We can reach kids that we couldn't reach before that needed this kind of thing.

Q. Now, this particular teacher as I understand it is hired by and is an employee of the Intermediate Unit?

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A. That is correct.

Q. And just so that we have it clear on the record, perhaps you would explain to the members of the court what the Intermediate Unit is, what it is and what its function is in the administration of the entire public school system?

A. This is a combination of Lancaster and Lebanon County schools that are being coordinated together to provide better quality of services and a better range of services for all the students, children in that two-county area, and they have this special staff of Intermediate Unit which provides a series of services.

Q. And you are referring now, of course, to the public school system?

A. That is correct. We have never been involved with Intermediate Unit 13 until really the setting up of this Act.

Q. Now, are there benefits that were previously available to the public schools under the jurisdiction of Intermediate Unit No. 13 which as a result of Acts 194 and 195 are now also available to you as a non-public school?

A. Yes. We have always looked with great envy on the great range in quality of the public school library, film library, and we have contacted public schools many times before this and we have been told we could not participate in this library because we were not a public school. Now through 194 we are able to use the Lancaster-Lebanon Intermediate Unit Film Library, and I believe you

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are holding a copy of the catalog there which is a tremendous educational benefit, potential benefit, to our students.

Mr. Reath: At this time, if Your Honor please—and I have shown this to opposing counsel—I would like to have this marked as the defendant's next number exhibit which would be D-23.

(Instructional Materials Services Film Catalog, Lancaster-Lebanon Intermediate Unit was marked Exhibit D-23 for identification.)

By Mr. Reath:

Q. And I show you the exhibit marked for identification as D-23.

A. That's right.

Q. And would you hold that up to the members of the court and explain what that is?

A. This is a film catalog for the Lancaster-Lebanon Intermediate Unit and it gives a full list under topics of films that can be obtained by this unit for use in the classroom by the individual teacher and it covers a wide range of subject matter from art to history to mathematics to science.

Q. And these are materials that have heretofore been always available in the public schools but now under Acts 194 and 195 are available to you on the same basis?

A. Yes, even if we had been able to obtain these films before, which we were not, I mean, we just couldn't do it, we could not have afforded the charge per pupil which we now can receive under

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Act 194.

Mr. Reath: I ask that the next document be marked as Defendant's Exhibit D-24 which is another publication of the Lancaster-Lebanon Intermediate Unit entitled "Intermedia Workshops for Teachers," Volume II, No. 1, dated September 1, 1973.

("Intermedia" was marked Exhibit D-24 for identification.)

By Mr. Reath:

Q. And I show you this pamphlet marked D-24 which I have already identified. Would you hold that up to the members of the court and explain what that is and what services are available to you now that were not heretofore which were also available to the public schools in your area?

A. Well, this has just been an opening up of certain opportunities for us that we really have not had before. There are a series of very excellent workshops being planned by Lancaster-Lebanon Intermediate Unit in which

we are invited to participate. Not only are we invited, but secondly, we now would be able to apply under Act 194 for funds to cover the expenses of these workshops.

Judge Bechtle: They are for teachers? Is that for teachers?

The Witness: That's for teachers, yes.

By Mr. Reath:

Q. Now, Mr. Jarvis, with respect to the program that you have set up for remedial reading, and with respect to these other benefits

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that you are now eligible to receive and for which you now have commitments from the Intermediate Unit, would you explain to the court what effect these would have on the education of the children committed to your charge and your school if the court were to prevent the Commonwealth from making available to the Intermediate Units the money which would be used to pay for these benefits?

A. Yes. I think we would be hit hardest, our kids would be hit hardest, because they would be individually affected by the loss of this remedial reading teaching and I would be I think very concerned with the educational results of losing that trained personnel that we have never had before.

In terms of some of the other parts of the program, there would be equipment that we would be hoping for, certain science equipment that we had not been able to get before, there would be certain books that we had hoped—individual teachers had hoped—would be used in dealing with the individual students, and I would say that I think the kids would definitely suffer.

Q. And would you be able in your existing school budget to absorb those costs and to continue them in some other fashion?

A. Our school budget is set up so that it balances if we can through annual giving raise something like $36,000, so we automatically start the year with a deficit and we have to go out to the community on the basis of what we do for the community to ask for additional support, so we have no way in which these

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services could be added in on our own.

Mr. Reath: Thank you, Mr. Jarvis. I have no other questions.

Judge Gibbons: Any cross-examination?

Mr. Thorn: No, no questions.

Mr. Ball: No questions, Your Honor.

By Judge Bechtle:

Q. What grade levels does your school encompass?

A. We go from nursery to 12th grade.

Q. And are all your students required to conform to the Commonwealth of Pennsylvania compulsory attendance laws?

A. Absolutely, sir.

Judge Bechtle: That's all I have.

Judge Gibbons: Mr. Reath, do you offer Exhibits D-23 and D-24?

Mr. Reath: Yes, sir, I do.

Judge Gibbons: Mr. Thorn?

Mr. Thorn: No objection.

Mr. Reath: And at this time also, if Your Honor please, I would merely like to make a formal offer for the record of the documents C-1 through C-4 which appear at Page 5 of the pre-trial order. Copies of those have already been filed with the court and referred to in this order, but I make a formal offer of them.

Judge Gibbons: Mr. Thorn?

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Mr. Thorn: No objection.

The Court: All right, D-23 and 24 will be received in evidence, and C-1 through C-4, listed on Page 5 of the pre-trial order, will be received in evidence.

(Exhibits D-23 and 24 and C-1 through C-4 were received in evidence.)

Judge Gibbons: Be sure that the court reporter has the court filed copies of C-1 through 4.

Mr. Reath: Yes. Mrs. Elliott will arrange for that as soon as the record is closed, Your Honor.

Judge Gibbons: Any other witnesses?
The defense rests?
Any rebuttal?

Mr. Thorn: No, Your Honor.

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DEPOSITION OF CARMEN BRUTTO.

Verbatim report of deposition taken at the offices of Ball & Skelly, 127 State Street, Harrisburg, Pennsylvania, on Tuesday,

September 4, 1973

9:00 a.m.

APPEARANCES:

WILLIAM THORN, ESQUIRE
12th Floor, Packard Building
Philadelphia, Pennsylvania 19102
For—The Plaintiffs

BALL & SKELLY
127 State Street
Harrisburg, Pennsylvania 17101

By: WILLIAM B. BALL, ESQUIRE
and
JOSEPH G. SKELLY, ESQUIRE
Intervenor for Jose Diaz, et al.

CERTIFICATE.

I, Rita Hallock, a Notary Public duly commissioned and qualified in and for the Commonwealth of Pennsylvania, do hereby certify that pursuant to the notice there came before me at 9:00 a.m. on Tuesday, September 4, 1973, at the offices of Ball & Skelly, 127 State Street, Harrisburg, Pennsylvania, the within-named person who was sworn by me to testify to the truth and nothing but the truth of his knowledge touching and concerning the matters in controversy in this cause; that he was thereupon carefully examined upon his oath and the examination reduced to writing under my supervision; that the deposition is a true record of the testimony given by the witness, and that the witness waived signature thereto as shown in the stipulation herewith.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties to the action in which this deposition was taken, and further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto or financially interested in this action.

In testimony whereof, I have hereunto subscribed my hand and affixed my seal of office this 5th day of September 1973.

My Commission Expires:
May 30, 1977

(SEAL)

RITA HALLOCK,
Rita Hallock,
Notary Public

STIPULATION.

It is hereby stipulated by and between counsel for the respective parties that signing, sealing, certification and filing are waived, and that all objections, except as to the form of the questions, are reserved to the time of trial.

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CARMEN BRUTTO, called as a witness, was duly sworn and testified as follows:

DIRECT EXAMINATION.

By Mr. Ball:

Q. State your name and address.

A. Carmen Brutto, 33 Circle Place, Camp Hill, Pennsylvania.

Q. Mr. Brutto, what is your occupation?

A. I am a reporter for the Patriot, Harrisburg Patriot, acting as a legislative correspondent.

Q. How long have you been in the field of journalism?

A. Since graduating from Temple University in 1950, I went from Temple to the Shenandoah Evening Herald, worked there until 1954. Then I came with the Patriot-News Company in 1954, the York Bureau Chief, worked in York for three years, came to Harrisburg in '57, worked as an assistant Sunday editor for about a year, and worked on the Evening News copy desk. Then I went to general assignment reporting with the Evening News. In 1961, I was assigned to bill coverage.

Q. Mr. Brutto, do you have membership in any professional organizations?

A. I am the president of the Pennsylvania Legislative

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Correspondents Association.

Q. Have you received any awards in the field of journalism?

A. Yes. Since I have been on the Hill, I have won the Keystone Press Award, which is an annual event by the Pennsylvania Newspaper Publishers Association.

Q. That was in what year?

A. It was around '63.

Q. I wonder if you would describe the nature of your work as chief legislative correspondent for the Patriot.

A. My work is confined strictly to legislative governmental work. I cover the legislature when it is in session, stick around the Hill when it is not in session, follow political activities, do election campaigns, any governmental action—cover the Governor when he is acting, or all—not all the legislative hearings, but the more significant legislative hearings that go on.

Q. Do you follow the main items of legislation?

A. Yes. We, on the Hill, are basically divided. The Capitol Hill reporters are divided into the wires and the specials. The wires cover virtually everything that goes on. The specials—they are the ones who work for specific newspapers—Philadelphia newspapers, Pittsburgh, and Harris-

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burg papers.

You follow the major legislation, or those pieces of legislation which your area is interested in.

Q. In connection with this, may we infer then that you are aware of legislation which creates major controversy?

A. Yes. As a matter of fact, one of the jobs I have, when there is a session on, is preparing something called the status of bills, which is a sort of a calendar of major bills and where they are in the Legislature and what is happening to them, and also, a weekly report on roll calls. We pretty well know what is passing and what is pending.

Q. In your work, would you say you are in contact with the statewide sentiment, state pulse, so to speak, currents and sentiments?

Mr. Thorn: Excuse me. The usual stipulation, I assume, covers the fact that objections as to relevancy are waived until trial.

Mr. Ball: Surely.

The Witness: I work with a combination of legislators and other newspaper correspondents. Like I said, we have Philadelphia and Pittsburgh newspapers, and some from other cities that come in and ask questions, and we get in contact with them.

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I do work for other newspapers also, and you get a pretty good reading of what is going on around the state, what the legislators feel are important issues, what their people are for and against.

By Mr. Ball:

Q. While the so-called acts of 1972, namely Acts 194 and 195, relating to textbooks and auxiliary services for nonpublic school children were before the General Assembly, did you observe division of any sort along political lines in connection with these measures?

A. Let me say, first, when you called me about some testimony about Act 195, I thought you were talking about the Public Employees Relations Law, which is Act 195 of 1970, and any reference to a law by an act No. 195 generally refers, or is accepted to mean that piece of legislation, because it is more commonly referred to as that.

On this other thing, there really wasn't anything significant in the——

Q. Was there a division along political lines?

A. What do you mean, "along political lines"? It had support on both sides of the aisle.

Q. But did you observe any religious fighting among

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the legislators over these bills?

A. I would have to say that the religious reference to legislation such as this has decreased since the first school bussing in 1963.

Q. But with respect to these bills——

A. With respect to these bills, as I recall, the only challenges would be on constitutional grounds, people questioning its constitutionality. The religious aspects are not usually brought up any more.

Q. In the case of other bills on the Hill, have you been aware of, for example, bus loads of demonstrators coming to the Capitol?

A. Oh, yes, there is a lot of legislation which brings busloads here.

Q. Picketing and demonstrating on the Capitol grounds?

A. You have such things as the insurance premium tax, school teacher raises, tax on cigars brought people. You have welfare bringing mobs of people, the failure of state employees to get their pay two months ago or so.

Q. There are demonstrations, handing out of inflammatory handbills, and so on?

A. There is very little handbill handing out. It is more on a sign basis.

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Q. Signs?

A. You have more signs. Very seldom do you see handbills of any kind.

Q. Did you observe or hear of any such events, picketing, demonstrations, busloads of people, and handing out or parading with signs and so on, in connection with these two acts?

A. No, I wasn't aware of any.

Q. Did you see any sort of activity in connection with these bills which, as a seasoned political observer, would constitute a threat to the normal political process?

A. No.

Q. What would you say were the issues of great urgency which were before the General Assembly in the Spring and Summer of 1972, the top key issues?

A. Well, the key issue in any Spring is the budget. Last year, there really wasn't any—there were some drug bills before the Legislature, but they did quit around the 22nd of June, once they passed the budget. Then they took their Summer recess. They got called back in August, but there was no——

Q. The budget then——

A. The budget takes precedence. Usually, nothing

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new until the budget news.

Q. Now, as a seasoned political observer, did it appear to you that the pending of these two acts we are talking about in the General Assembly tended to obscure these other issues of great urgency, such as the budget?

A. No. Since this bill required an appropriation, it wouldn't be likely to move until the budget moved anyhow, and I don't recall any bill being held up because of this pending—or any other bill—generally, the budget is the thing that holds up most of the legislation.

Q. Now obviously issues of great importance which are of a continuing nature that the Commonwealth, General Assembly, worries about from year to year, problems facing our Commonwealth—did the pendency of these two bills we are talking about, Mr. Brutto, appear to you to divert attention from these myriad issues and problems that are confronting our state government?

A. No.

Q. Did the pendency of these bills indicate to you that political fragmentation and divisiveness on religious lines thus become intensified?

A. No.

Mr. Ball: Mr. Skelly, do you have any questions?

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Mr. Skelly: No.

Mr. Ball: That is all for direct examination.

CROSS-EXAMINATION.

By Mr. Thorn:

Q. Mr. Brutto, what is your religious affiliation?

A. Catholic.

Q. Roman Catholic?

A. Yes.

Mr. Ball: We will object.

Mr. Thorn: I have no further questions. Thank you very much.

Mr. Ball: Well, we will object to the raising of the question of Mr. Brutto's religion by Mr. Thorn, we will ask Mr. Brutto, as a sworn witness, whether the fact of his religion has in any way influenced the answers which he has given to questions which he was sworn to answer truthfully this morning.

The Witness: May I make a statement?

No, because the fact that I am a Roman Catholic—I gain nothing. I would gain nothing from this legislation. I have got four children; none of them are in Catholic schools. I have got two children in college, both in—well, one is at

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Dickinson, and one is at Ohio State, which are non-Catholic schools. My other two children are in the

public school system, so the passage of this legislation or similar legislation would in no way affect me.

Mr. Ball: Thank you.

Mr. Thorn: Do you approve of state aid to religious education?

Mr. Ball: We will object to it again.

The Witness: Not in all the forms which it has been advocated, no.

Mr. Thorn: Do you approve of these two bills?

The Witness: The bills have merit, yes.

Mr. Thorn: So, you do approve of them?

The Witness: Yes.

Mr. Thorn: No further questions.

Mr. Ball: I have no further questions.

(The deposition was concluded at 9:40 a.m.)

I hereby certify that the testimony taken by me at the offices of Ball & Skelly, 127 State Street, Harrisburg, Pennsylvania, on the within cause, is fully and accurately indicated in my notes and that this is a true and correct transcript of same.

RITA HALLOCK,
Rita Hallock,
Reporter.

The opinions of the court below are printed in the Jurisdictional Statement as follows:

Majority Opinion	p. 1a
Dissenting Opinion	p. 53a